

1885-014 Chancery Causes. James Gillenwaters vs. Sanders H. Levacy bc  
Lee Co. S. H. Levacy vs. James Gillenwaters

Redman, Testament, Roberts, Babb, Moore, Osborne, Lawson, McPherson

CA-Contract Dispute  
T-Property

Will: 1859: Jesse Roberts: Lee County

-Deed



2

To the Honorable John Kelly Judge of the Circuit  
Court of Lee County Virginia

Humbly complaining your orator James Williamson  
Citizen &c. respectfully sheweth to your honor that he  
before to wit on the 23<sup>rd</sup> day of November 1873. he contract-  
ed for the purchase of a tract or parcel of land ly-  
ing and being in said County from one Sanders H  
Levacy. and adjoining the lands of Patrick Levacy  
Thomas Anderson Daniel Roberts Solomon Cowan  
Hugh Galliker and Allen Chandler containing as  
represented by the said Levacy Two hundred &  
fifty acres. for which your orator undertook and  
promised to pay to, said Levacy the sum of Two thousand  
represented to your orator that he was seized of said land in fee  
said dollars and the said Levacy undertook  
and bound himself to convey said land to your  
orator by a good and sufficient deed in fee  
simple with <sup>covenants of</sup> general warranty as soon as the pur-  
chase money was fully paid.

That your orator paid down in cash to the said  
S<sup>r</sup> Levacy the sum of \$500<sup>00</sup>. and executed for  
the balance his three several bonds or notes each  
for \$500<sup>00</sup>. The first of which he took, dated  
and payable on the 1st day of April 1874.



The second on the 1<sup>st</sup> day of October 1874 and  
the third and last is to become due and payable  
on the 1<sup>st</sup> day of October 1876.

Your orator will further state that upon the bond  
executed by your orator and which become due and  
payable on the 1<sup>st</sup> day of April 1874 he has paid the  
sum of \$375<sup>00</sup>. Thus making the sum of \$895<sup>00</sup> which  
he has paid towards the purchase price of said land  
leaving a balance of \$1105<sup>00</sup> still due and owing  
upon the note which become due and payable  
on the 1<sup>st</sup> day of October 1874. The said Sanders  
& Leracy for the benefit of Andrew Lestaniunt  
has brought his suit at law to collect said note  
and said action is now pending in the Circuit  
Court of Lee Co Va. Your orator will now state  
that heretofore to wit on the 5<sup>th</sup> day of January <sup>1876</sup>  
the said Sanders & Leracy came to your orator  
and represented to him that he had heretofore  
to wit on the day and year last aforesaid recon-  
veyed said land to his brother W. W. Leracy from  
whom he had purchased said land, and  
requested your orator to deliver up to him the



The Title bond which before that time he had  
executed to your orator, representing to your ora-  
tor that the said W. W. Leracy was the legal owner  
of said land and must make the conveyance  
when it was <sup>made</sup> and thereupon your orator thinking  
from said representations of said Leracy that it  
was right and proper for him to do <sup>and</sup> did deliver  
to said Leracy his title bond and take in stead  
thereof the Title bond of the said W. W. Leracy  
and afterwards to wit on the day and year last afore-  
said the said W. W. Leracy executed to your orator  
his title bond binding himself in the penal sum  
of \$4000<sup>00</sup> to convey said land to your orator in fee  
simple with covenants of general warranty as  
soon as the purchase money is fully paid which  
will more fully appear by reference to said bond  
which is herewith filed as part hereof Marked (A)

Your orator will now state to your Honor that  
this land is a part of a large tract of land owned  
by Jesse Roberts in his life time, that some  
time before the death of said Roberts he under-  
took to partition his lands between his children  
and heirs and that he did make partition



There of which will more fully appear by reference  
to the last will and Testament of said Roberts now  
of Record in the Clerk's office of the Circuit Court  
of Lee County Va a copy of said will is filed here  
with marked (B) as part hereof.

Your orator will further represent that he is ad-  
vised that under said will the children of said  
Jesse Roberts only took a conditional life estate  
liable to be determined upon their abandonment of  
their lot or parcel, and certainly determined at  
their death when said land by said will absolutely  
rests in the grandchildren of the Testator Jesse  
Roberts, all of which fully appears by said will  
a copy which as before stated is filed here with  
marked (B) and to which reference is here again  
made. Your orator will further state that two of  
the sons of the said Jesse Roberts to wit John  
and Waller Roberts sold and conveyed or at-  
tempted to convey their shares <sup>in said land</sup> under their father's  
will to W H Leacy. The said John by deed bear-  
ing date on the 28<sup>th</sup> day of December 1868 a copy of  
which is filed here with as part hereof marked (C)



W. W. Leracy will know that they did not have  
good <sup>to</sup> title, said <sup>Land</sup> and they will know that any  
conveyance which they might make, <sup>or attempt to make</sup> would  
not pass the legal title thereof and your orator  
charges that he was defrauded by their conceal-  
ments, that said sale to him was an actual  
fraud, and that the said Leracy will know it.  
Your orator will further state that the said  
W. W. Leracy is notoriously insolvent and his bind-  
ing himself to convey said land is utterly  
worthless.

Your orator being <sup>in</sup> remediless at common law is  
relievable only in a Court of equity his prayer  
therefore is that the said Sanders & Leracy W. W.  
Leracy Andrew Testament, Waller Robert and  
John Roberts be made parties to this bill. That  
that they each be required to answer to  
several allegations on oath. That the said  
said Sanders & Leracy for &c be enjoined from  
any further proceeding in his said suit at law.  
That he be enjoined and restrained from the  
collection <sup>of</sup> the balance still due on the note



and the said Waller by deed bearing date on the  
4<sup>th</sup> day of August 1872. a copy of which is filed  
as part hereof marked (D) That the said W W Leracy  
sold and conveyed the same to Sanders & Lera-  
cy by deed bearing date on the day of  
May 1873. a copy of which deed is filed here  
with marked (E) as part hereof and that said  
Sanders & Leracy sold and ~~and~~ bound him-  
self as before stated to convey to your orator.  
but that he recovered as before stated to the said  
But this last mentioned conveyance has not yet been recorded.  
W W Leracy. Your orator will further state  
the deeds of the said John & Waller Roberts by  
reference to the said W W Leracy did not pass the  
legal title to said land because there was no title  
in them greater than a life estate and that this  
life estate might <sup>be</sup> sooner terminated by a contingency  
and that it was terminated by said sale and at-  
tempted conveyance <sup>and abandonment of said land</sup>. That they could not  
pass a longer estate than was in them and  
that said W W Leracy nor Sanders & Leracy nei-  
ther by their said purchases of or said acquired  
good title to this land. Your orator further  
charges that the said S W Leracy and the said.



To the Honorable John A. Kelly Judge of  
The Circuit Court of Lee County Virginia

The bill of review, of S. H. Levacy, in  
a pending cause in this Honorable Court  
in which James Gillinwater is plaintiff  
and your complainant and others ~~are~~  
defendants. The said Gillinwater at  
the August term 1875, filed his bill and  
obtained an injunction, to stay proceedings  
at law on certain purchase money notes  
executed to your complainant as hereinafter  
set forth.

W. H. Levacy, a brother of this complainant  
was the owner of a tract of land or some  
interest therein, he became liable to answer  
an indictment, for a breach of  
U. S. Revenue laws, and was in custody  
of the Marshall for the Western dist of  
Virginia, and while under arrest, was  
granted bail in a bond of \$1000. on this  
bond your complainant became security,  
and to indemnify and save him  
harmless the said W. H. Levacy conveyed to  
your complainant said land by deed  
absolute or complete on its face. But  
said conveyance was only upon the contingency  
that your complainant had to  
pay said bond to become operative, and  
was therefore in the nature of a mortgage.



Whilst your Complainant was thus the holder of the legal title, the said W. W. Levacy bargained and sold it to the plff, on the 23<sup>d</sup> day of Nov. 1873, before said bond had been released or forfeited. Your Complainant still to protect himself took the notes due & payable to himself, and received a part of the purchase price paid said Gillinwaters the plff. Soon after this transaction said W. W. Levacy was released from the penalty of said bond and your Complainant became satisfied as to his responsibility and gave up said bonds to W. W. Levacy and paid over every dollar of money received by him on said purchase. And notwithstanding the sale aforesaid re-conveyed said lands back to W. W. Levacy, between whom and the said plff alone said sale had been executed, and then on the 8<sup>th</sup> day of Jan. 1875, the said Gillinwaters surrendered and gave up your Complainant's title bond and took and accepted W. W. Levacy's title bond bearing date on the last day named for a title to said land. And thus your Complainant ceased from that time forward to have any interest whatever in said transaction. The purchase money notes



thus surrendered by him to W. W. Levacy was transferred to different persons, one to Andrew Testament who sued thereon and to enjoin which gave rise to the original bill, and pending cause - All these facts fully appear by the papers and exhibits filed in said cause; to which reference is here made as well as to the exhibits theretofore filed.

The main question however, in the cause turned upon the title to said land, which was held not good by the Court and said Contract rescinded and an account of rents & profits ordered - The plff Gillinwaters had alleged in his bill that this trade was made with this Complainant that allegation was denied by the answer of Complainant and the said W. W. Levacy and the proof showed it to have been a trade between W. W. Levacy and said Gillinwaters - Reference is here made to the depositions in the original cause and answers before mentioned - An account of rents and profits was taken, upon arbitration entered into between W. W. Levacy and said Gillinwaters this Complainant being in no wise a party thereto - nor had he any part therein - The paper signed by them (W. W. Levacy & Gillinwaters) was acted on



By Commissioner H. J. Morgan, and is in  
file therewith, and as to rents & profits,  
improvements and payments said  
paper forms the basis - Said report &  
proper are also respectfully referred to.  
Although the plff alleged he made this  
trade with this complainant, and the  
same was denied as before related and  
the answer sustained by the proof - The  
decree of Dec. 8-1875, without passing  
upon the question judicially, recites "that  
the Contract or sale of land made by the de-  
fendant, Sanders H. & W. W. Levacy" &c. be  
set aside and this complainant enjoined from  
collecting said notes which he had never  
endeavored to do and then goes on to direct  
the account of payments rents & improve-  
ments - which said rents & improvements  
were submitted for arbitration as aforesaid  
the report made & confirmed; and although  
this complainant had no interest therein  
was no party to said arbitration, was  
in no way liable to the plff; yet the  
decree of April 5-1877 confirming said  
report adjudges personally against this  
respondent and W. W. Levacy the sum of  
\$1001 25- with interest on the whole sum  
from.



March 1<sup>st</sup>. 1877, appointed a commissioner to  
sell said land, and so much of this  
Complainant's as should be found necessary  
to pay the same. Although this ~~respondent~~  
Complainant appeared and answered in said  
Cause, the litigation was carried on wholly  
between W. W. Levacy and the plff., and was  
mainly upon the question of title, and this  
respondent never knew as a matter of fact  
that such a decree had been rendered -  
<sup>until recently.</sup>  
Subsequently execution has been issued  
for said balance after the application of  
the W. W. Levacy land sale ~~for~~ and is  
now in the hand of H. Miles D.S. for collection.  
Your Complainant was recently sued at  
law by a holder of one of these purchase  
money notes, from W. W. Levacy upon his  
implied assumpsit to pay the same because  
it had been executed <sup>to him</sup> and he made  
defence thereto and was absolved from  
the payment, because W. W. Levacy having  
no right of action against this Complainant  
could not so much right in an other - In  
this case having conveyed said land to  
W. W. Levacy, & lifted his title bond from  
Gillinwaters the plff., and Gillinwaters  
having accepted W. W. Levacy's bond for  
the same and surrendered up Complainant's



It was a clear release to the Complainant and he was in no wise bound for the further performance thereof. He is advised therefore it was error to decree against him the sums aforesaid, or any other sum and that said errors are apparent from the papers of the cause. He alleges that James Gillinwater is a non resident of the Commonwealth of Virginia and is wholly insolvent so that if he pays the execution aforesaid he will have no remedy against him the said Gillinwater.

The object of this bill therefore is to have a review of the proceedings and decrees therein, and to have said errors corrected, and said cause fully reviewed and other errors manifest in the papers therein set aside & corrected. And further to enjoin and inhibit the said James Gillinwater his agents & attorney and the said deputy sheriff from collecting said execution as aforesaid.

To effect which he prays that James Gillinwater be made a party defendant thereto, and answer this bill upon oath; that said ~~errors~~ ~~be~~ cause be reviewed and said errors and all other apparent thereon corrected and set aside



and that he the said Gallinwaters be en-  
joined and inhibited from the collecting  
of said excutior or any part thereof  
and for all other further and general relief  
may upon issue &c.

A. L. Pridemore  
for S. H. Levacy.

Virginia Lee County to wit-

This day Said S. H. Levacy personally  
appeared before me and made oath  
that the statements contained in the foregoing  
bill so far as made upon his own  
knowledge are true and so far as made  
upon information derived from others  
he believes them to be true.

Given under my hand this 10<sup>th</sup> day  
of July 1883.

John R. Gibson Clerk



65.98  
15.00  
Cour. 7.50  
8, 1.00

\$29.48

Sander H. Levacy

v Bill of Review

James Gilliwaters

Response granted. Bond with  
good security required in  
double the sum of the decree  
hereby enjoined with condition  
to pay to said decree & all  
costs & charges awarded against  
the plaintiff, should the same  
be hereafter involved.

J. S. Kelly  
Jan. 10, 1883

To clerk of said court

Lee County

1883 Mr. Term Bill filed

1884 Court is this year

1885 Mr. dismissed at age  
20 to -



To The Hon John A. Kelley Judge of the  
Circuit Court of Le & County

W. M. Levee a defendant to a bill  
filed and pending in this Court by  
James Gillenwater, Comes and says that  
it is not sufficient in law.

But if answer should be required  
he answers and says that the statements  
set out in the bill do not import  
a correct history of the transaction therein  
referred to, It is not true that the purchase  
was made by the plaintiff from J. H.  
Levee it was made directly from  
his respondent. He purchased the  
land from John & Walter Roberts to  
whom the same was devised by their  
father James Roberts as set out in  
the bill. This will is singularly framed  
and its phraseology rather unusual  
it is manifestly the production of an  
untutored man but little versed in  
legal technicalities and even limited  
in his mother's tongue, Yet he is advised  
that it substantially performs the office  
intended by the testator so as to vest each  
of the devisees with the land set apart  
to him or her by the will, Your protest  
is advised that the provision in the will,  
that if any of the children of the testator  
should move off the land devised  
to him that the other children should  
occupy the same till their return" is



Contrary to the policy of the law  
and is negatory, All the devises mutually  
accord the fact that each has an absolute  
right in the simple to the land devised  
to him or her and no claims any right  
to the land of another though he might  
either move off or alienate the same.

Your Respondent states that it  
was he and not S. H. Leracy, who  
first bargained and sold the land  
to the plaintiff. At that time S. H.  
Leracy was holding the right to  
said land in trust for respondent  
which fact was communicated to the  
plaintiff, and for this reason the  
note for the purchase money was  
executed to S. H. Leracy and a  
bond was executed by him to Gilman  
for the title. Afterwards S. H. Leracy  
conveyed to respondent the legal title  
and then the bond which the plaintiff  
held was lifted and substituted  
by the bond given by respondent for  
title. Before that the plaintiff made the  
purchase he was informed of the character  
of the will of Jesse Roberts, and before  
the execution to him of the bond of  
respondent, he <sup>person</sup> came to the Court house  
of this County and examined the will  
of the testator Roberts and took the  
advice of P. C. Johnson <sup>as to its effi-</sup>  
cacy and effect. Therefore whatever



difficulties it may present ~~but~~ the same was well known to the plaintiff. And at this time said respondent proposed to him that if he had any misgivings about the validity of the title, he would then rescind the contract deliver him up his notes and pay him back the money which he had then paid, by him accounting for the use and occupation of the land. But he positively declined to do so, and answered that he would not sell the land for less than \$2500. After this he paid said respondent \$1000 nothing the sum to be paid as stated in the bill. From these statements it will be seen that the allegations in the bill as to fraud concealment or unfair dealing is all without foundation and made so as to defer & delay the collection of the purchase money due from him. The allegation of the insolvency of respondent is also gratuitous and untrue. He considers himself worth at least \$1500 - After the payment of all just dues,

Respondent is ready at any time to make a deed with general warranty to the land sold to the plaintiff upon payment of the purchase money. And having now answered says that the injunction be dissolved.

Yours Truly  
Hague W. Pickens



W. W. Leary has made oath before  
me that the statements in the foregoing  
return are true or he believes

John R. Gibson Esq.  
Dec 22nd 1875.

W. W. Leary

ads { answer & return

Jas. Gillmanworth

Filed Dec 22nd 1875.  
James W. W. Clerk.

60 80 to June 1877.



Respondant further states that Solomon Owens gave up a part of the land he had rented to Hiram K. Levey, and said Hiram K. Levey was preparing to tend the same, when he rented it to your Respondant also, and your Respondant cultivated it.

To the Hon John A Kelly Judge of the Circuit Court of Lee County Va

The answer of J. H. Redman to a rule awarded against him in the chancery cause of James, Billenwater vs Saunders & Levey & others, to show cause at the present term of your honors court why he should not be required to pay the rents of the land to a Commissioner of this court.

Respondant answering says that some time in the Fall of 1878 Respondant & Solomon Owens rented a tract of land from W. W. Levey and Respondant went on to sow wheat & planted a crop of corn in Spring of 1879. Respondant was to pay one third of the grain raised on the land and before wheat harvest he was notified by Hiram K Levey that the rents of the land had been purchased by him from W. W. Levey and Respondant thereupon entered into an obligation to pay the rents to said Hiram K Levey, and paid him the rent of the wheat before he was served with process in this cause. Respondant now he



the one third of the corn made  
to pay to said Hiram K. Levey  
or such other person as the  
court may decide shall receive  
it. Respondent supposes there  
will be something near two  
hundred bushels of rent corn  
though there may be more or  
less. Respondent would further  
state that he is about to remove  
from the premises upon which  
the rent is and desires that  
some disposition shall be made  
of the rent at this term of the  
as he cannot take care of  
the same after he leaves the  
premises. And now having  
fully answered the prayer to  
be hence dismissed with his  
reasonable costs. and as in  
duty bound will ever pray  
to

~~Monsieur~~

Rallyn for Resp<sup>t</sup>

Virginia:

Lee County to wit:



This day J. H. Ridman made oath  
before me the undersigned that  
the facts set forth in the foregoing  
answer are true in so far as  
they rest within his own knowledge  
and that so far as they depend  
upon information derived from  
others he believes them to be true  
Given under my hand this  
the 29<sup>th</sup> day of November 1879

James W. Orr. Clk.



J. H. Redman

ads ~~to~~ answer

James Williamson

Feb 1st Dec 1879

Wm H. Crook



To the Hon John A. Kelly Judge  
of the Circuit Court of Lee County  
Virginia

<sup>I demur &</sup>  
The answer of James  
Gillumwater to the bill of review  
of Saunders & Leacy exhibited in  
this honorable court against him:

The defendant says he is advised  
there is good cause of demur  
to said bill & he does demur  
accordingly & prays judgment

that waving his said demur  
but relying thereon for answer  
to said bill or so much as  
he is advised it is material  
for him to answer respondent

<sup>he is advised</sup>  
says, that the time within  
which a bill of review may  
be filed has long since elapsed  
in this case & he relies on and  
pleads the statute of limitation



to said bill of the plaintiff:

It must be taken as to the law on said point independent says it is passing strange that for a period of only six years the said ~~plaintiff~~ who was a party to the suit was represented by able & skillful counsel should be liable to a decree for \$100/ <sup>25</sup> with interest from March 1<sup>st</sup> 1877 till paid & costs & the said plaintiff should not know of its <sup>existence</sup> until recently (?) it is to be remarked that this strange ignorance of the plaintiff continued until his brother W. W. Levey had left the state and that to in an insolvent condition then he recently (?) discovers that he is unjustly subject to a decree of \$100/ <sup>25</sup> &c. His counsel doubtless were acceptable and



to keep him informed as to the progress of the suit  
doubtless well paid, & ~~pld~~ with \$500<sup>00</sup>  
of respondent's money received in  
April 1873 & \$290<sup>00</sup> paid April 30<sup>th</sup>  
1874 & \$100<sup>00</sup> paid ~~pld~~ assignee April 75  
& \$5<sup>00</sup> pd March 31<sup>st</sup> 1875 to Hogan  
for land to which there was  
negotiable the money to an  
insolvent Brother & is not free - & this  
is Equity and good conscience! Certainly  
not on its face it is inequitable and  
besides respondent denies that  
the plaintiff paid W W Levee, and  
sum of \$895<sup>00</sup> & it is denied. Respondent  
wishes that at the time of the exchange  
of the bonds he was informed as  
his rights under to the title under which he held, ~~that~~  
that the plaintiff came to respondent  
& represented that he had conveyed  
to W W Levee the said land & that  
he said W W Levee, was the legal owner  
of said land & must make the title



your respondent being uninformed  
 acted upon the representations of  
 plaintiff; which the record shows  
 was part of a cunningly conceived  
 plan to strip respondent a confident  
 & unlearned man of \$875<sup>00</sup> of his hard  
 earned money - and a court of conscience  
 is asked to settle the inquiry & call  
 it justice requiring strict proof of  
 the bill's bill debt proofs to be heard & dismissed  
 with his costs as in duty &c  
 Duncan Morrison &

Va. Leg. Court to wit

The deft. has made oath to the  
 truth of the foregoing answer so far as states in his own  
 knowledge & his belief of the truth of facts stated as  
 in grade or advice or counsel. Given under my hand  
 this 29<sup>th</sup> Nov 1883.

J. G. Hyatt Clerk

Samuel H. Green

V.S. Green & Green

James Gillenwater

Filed in New York

James H. Green

Nov 30<sup>th</sup> 1883

J. G. Hyatt

Ch. 600



To The Hon<sup>ble</sup> J<sup>rs</sup> A Kelly Judge of  
The Circuit Court of Lee County

The Separate Answer of Andrew Testament  
to a bill filed against him & others  
in this Court by Jas Gillenwaters.  
Respondent states that he has heard  
and the Answer of his Co-deft W  
W. Leracy and that he believes  
the allegations & statements therein set  
forth to be true and adopts  
them as part of this Answer.

He is satisfied that the sale of the  
land in the bill mentioned was made  
to the plaintiff by W. W. Leracy, and  
at the time that the bond of the  
latter was executed to the former  
for a title he had a full knowledge  
of the will of J<sup>as</sup> Roberts under  
which title was derived. He is  
satisfied that the bill of the plaintiff  
is for the purpose of hindering and  
delaying respondent in the collection  
of the purchase money - After a  
knowledge of the character of said  
will, the said W. W. Leracy offered  
to rescind the contract of sale and  
pay back to the plaintiff the money  
which he had paid but the plaintiff  
refused, he is therefore in default.

He prays that the injunction granted  
be dissolved and bill dismissed

Wogan & Richardson



Ans. Lestament

adv { ans

Jrs. Gillman

Filed Dec 21 1875

James H. On. Clerk.

The day went on like a dream. I was with the boys and  
but the forenoon will be the best of the  
children's lives. I have not the time to write.

John C. Wilson, D.D.



To the Hon John A Kelly Judge of  
the Circuit Court of Lee County Va  
The separate answer of S. H. Leracy  
to a bill filed in this Court against  
him & others by James G. Hinesworth,  
He states that he has read the answer  
in this cause of his Co-defendant  
W. W. Leracy. That the facts therein  
stated he believes to be true and  
adopts it as part of this answer.  
He avers that it was not he but  
W. W. Leracy who made sale of the  
land in the bill mentioned to the  
plaintiff. That at that time he  
held the legal title in trust for  
W. W. Leracy and subsequently  
conveyed to him the same, and  
that the burden of respondent held  
by the plaintiff was lifted and  
the bond of W. W. Leracy executed  
in its stead, and having made  
answer prays to be hence dismissed  
Hagan O'Ridmore

W. W. Leracy has made oath before me that  
the statement in the foregoing answer is true  
to the best of his belief. Dec 15<sup>th</sup> 1876

John D. Gibson, C. C.



S. H. Leracy

abs. ans

Jrs. Giltner

Filed Dec 2<sup>d</sup> 1875.

James H. Orr, Clerk.

No. 50 to Jan'y 1877

Feb 10 1877



To His Honor John A. Kelly Judge of  
the Circuit Court of Lee County Va  
John & Walter Roberts who are  
made defendants in a bill filed  
in this Court against them & others  
Come and say that it is not  
sufficient in law, when for  
they answer

Wm. & P. R. Moore



Jos & Walter Roberts

ads { sum

Jos. Gillenwaters

Filed Dec. 2<sup>d</sup> 1878.

James W. Orr Clerk

Dem. 5-17

to 25 to Aug 1-77.







D. H. Levaey

Decree  
Final

James H. Gillinwater

March 7. 1885

Entered page 423-4

J. H. Gillinwater

Enter this

March 26 1886

J. H. Gillinwater

The said D. H. Levaey then  
paying over and accounting to the  
proper persons for all sums  
before that time received by  
him. It adjudges that D. H.  
Levaey receive from defendant  
James H. Gillinwater the cash of  
the crop bill in this cause. And in  
the original cause the execution issued  
from upon decrees against said D. H.  
Levaey or against him and assigns  
perpetually enjoined annulled & vacated  
and both causes are dismissed as  
to D. H. Levaey.



Jas. Gillemeater Complainant

vs.

Sanders H. Levicy et al Defs

In Chy

Sanders H. Levicy this day tendered a bill of review to the decrees of this Court in this cause, and asked leave to file the same, to the filing of which the plaintiff objects, and the motion was argued by counsel. On consideration whereof, the Court is of opinion that, if the last decree in this cause, ~~is final~~, rendered the 6<sup>th</sup> day of December 1879, is a final decree, then it is too late to ~~admit of~~ allow the filing of the bill of review. But the Court is further of opinion that both the decree of 28<sup>th</sup> of Nov. 1879, and the decree of the 4<sup>th</sup> day of April 1877 ~~remain~~ are interlocutory decrees, and still remain unexecuted, and the decree of 6 Dec. 1879 did not annul or set them aside. The paper offered as a bill of review is therefore treated as a petition for a rehearing, and as such is allowed to be filed, and a rule is awarded against Gillemeater & M. W. Levacy to answer the same, and the cause is continued.



Gullenwater & Lerisy

Entered page 334

J. H. Styratt  
clerk

Enter

J. A. K.

Sept 4/83

Chd 60



James Gillenwaters  
vs  
Samuel H. Leary et al.

Plff  
vs  
In chancery  
Deft.

The order of Continuance made in this cause on the 28<sup>th</sup> day of November 1879, is set aside and the cause came on again this 6<sup>th</sup> day of December 1879 to be heard upon the papers formerly read in the cause, the rule awarded at the last term of the Court and the answer of Jt Remond to said Rule filed on the 1<sup>st</sup> day of December 1879. and was argued by counsel on consideration whereof said rule is dismissed. and it appearing to the Court from the report of Court Duncan confirmed a decree entered in this cause on the 28<sup>th</sup> day of December 1879. That he has sold the lands of H. H. Leary mentioned in the bill it is adjudged ordered and decreed that the sum realized from said sale be placed as a credit on the Plaintiffs Judgement and he may now mention ~~the said~~ Judgement subject to said Credit And the Cause is concluded.



James Williamson  
25-3 Decree  
of the Legislature  
for Jan 1879

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Entered in Report

Entered this Decree  
Jan 6<sup>th</sup> 1879.



James Williamson

vs.

Sanders & Leray

Pltff

3 In chcy.

Def

The order of continuance  
in this case made on the 28<sup>th</sup> day of November  
1879 is set aside and the cause came on  
again this day to be heard upon the papers  
formerly read in the cause and the ans-  
wer of J. St. Edmund to the rule, against  
him and Solomon D Owens. returnable  
to this term of the Court, and was argued  
by Counsel, for reasons appearing to  
the Court said rule is dismissed, and  
the amount of the sale of said land as  
reported by the Commissioner after deduct-  
ing the costs and commissions of sale  
is directed to be ascertained as a credit upon  
the judgement or decree heretofore rendered  
in said case in favor of the Plaintiff  
against the said W. W. & Sanders & Leray  
and he may have execution on  
said judgement and this case is  
continued

Order of the Court in this case, said rule,



James Gillemont

75 3 Dec 22

James Gillemont

Enter this day

Dec 30, 1879



James Gillenwaters

vs

Sanders & Lersey et al

Plff

3 In Chancery.

Dft.

This cause came on this 28<sup>th</sup> day of November 1879 to be again heard upon the papers formerly read in the cause and the report of C. J. Duncan Special Commissioner in said cause filed on the 13<sup>th</sup> day of November 1879. and the rule issued in this cause at the last term against Solomon D Owens and Horrey Redmond returnable to the first day of this term. and was argued by counsel. and it appearing to the Court that said report has been filed the time required by law and that there are no exceptions filed thereto said report is confirmed and it further appearing from said report that James Gillenwaters the purchaser of said land is also the judgment creditor and entitled to the fund for which said land sold the said Commissioner is directed to surrender to the purchaser his said note for the purchase price of said land and make him a deed thereto as soon as he fully pays up the costs of this suit. and here is granted to the said Solomon D Owens and Horrey Redmond to answer said Rule and this cause is continued until the next term.



James Gillenwater  
20<sup>th</sup> Decer  
Sunder St. Lenny St.

---

Nov Term 1879

---

Center Page 51.  
Jat H. O. R. L.

Center This de ar  
J. A. R.

Nov 28<sup>th</sup> 1879.

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James L. Lowaters

278

Gen. Aug

Samuelson, H. Lacey et al. 2

This cause came on this day to be heard upon the papers heretofore read in this cause the deans heretofore entered and was argued by counsel, and it appearing to the court that the commissioner heretofore appointed has not executed the decree of sale in this cause heretofore entered, it is adjudged and decreed after first ~~advertising~~ <sup>as now</sup> as he can the prior <sup>lien and</sup> ~~decree~~ and decree that he proceed to execute said decree in strict direction by selling first the land of W. W. Levey or so much thereof as may be necessary to pay the debt interest and cost, in said decree of sale mentioned upon the terms in said decree specified, and if the sale of the said W. W. Levey's land in the bill and proceedings mentioned fail to pay the said debt interest & cost in said decree mentioned, he will proceed to sell upon the same terms, and after advertising as in said former decree directed so much of the lands of Samuel H. Levey as may be necessary to pay the residue of said debt interest and costs upon the terms in the former decree mentioned; he shall well submit to any prior lien upon said lands, and will report to this court; but it being suggested that the



land of H. W. Linn first having decreed to  
 be sold have been sent to Solomon &  
 Owens & St. Richmond by said Livery it is adjudged  
 ordered and decreed that said Solomon & Ow-  
 ens & St. Richmond be summoned to appear  
 here at the first day of the next term of this  
 court to show cause if any they can why  
 the amount of said rents shall not be paid  
 to the commissioner of this court, and to  
 answer on oath as to the amount thereof  
 the commissioner will not execute  
 this decree as to the sale of the lands  
 of Saunders H. Livery until after the  
 rising of the next ensuing term of  
 this court and this cause is continued.

James G. Linn

23 2 Decree

Saunders H. Livery et al

March Term 1899

Picture Page 30

J. W. Linn & Co.

Why and where

What is it

Exh

Exh

Exh

Exh



James Williamson

Plaintiff

vs

B. Inchoy

S. H. Lacey et al

Def to

This cause came on again to be heard this day upon the papers ~~for~~ read in the case. The orders and decrees heretofore entered the report of C. J. Duncan Special Commissioner filed in said cause on the 1st day of November 1877 and was argued by counsel, and it appearing to the court that said report has been filed for more than 10 days before the first day of this Term and that it is accepted to said report is confirmed. And it appearing to the court that the entire sum which the plaintiff, by decree rendered in this cause on the 2nd day of April 1877, recovered against the said Sanders H. Lacey and Wm Lacey is still unpaid and it further appearing to the court that the land directed to be sold to pay the sum mentioned in said decree, since, the execution thereof has been levied on by James C. Scott Deputy for Thomas S. Day sheriff of Lee County Virginia to satisfy an execution in favor of the complainant, which levy has rendered a sale of said land under said decree of the 2nd day of April 1877, insufficient at this time on consideration whereof the court is of opinion that the plaintiff is entitled to have execution against the said Sanders H. & Wm Lacey for the sum <sup>they owe</sup> decreed to pay to him. It is therefore adjudged ordered and



That the Clerk of this Court do execute  
in favor of the said James Williamson against  
Sanders & Levasy and William W Levasy  
for the sum of \$1001.<sup>25</sup> with interest thereon  
from the 1<sup>st</sup> day of March 1877 till paid and  
the costs of this suit to be taxed by the Clerk  
and this cause is continued

James Williamson  
vs  
M Levasy  
W Levasy et al

Entered O. B. page 414.

W. H. Orr Jr. Sec.

Enter  
to 29th  
226/77



James Gillenwaters  
v.s.

Plffs.

Sanders & N. Levaey et als.

Defls.

La Chy.

This Cause Come on this  
4<sup>th</sup> day of Sept. 1877 to be again heard  
on the papers formerly read in the Cause  
& the report of C. P. Duncan Special Commr.  
filed on the 19<sup>th</sup> Day of Aug. 1877. It appear-  
ing to the Court that said report has been  
filed the time required by law & that there  
are no exceptions thereto, the same is confirmed.  
On Consideration whereof & the Court being  
of opinion that it <sup>would</sup> ~~will~~ be improper for  
said Commr. to sell the land in the bill of proceed-  
ings mentioned while there is a cloud resting  
upon the title ~~title~~ ~~the~~. It is therefore adjudged  
ordered & decreed that said Commr. delay the  
sale of said land till further orders of this  
Court & this Cause is continued till next term.



James Tillman

V.S. of Decree.

S. H. Leacy et als.

Entered page 657

James W. Orr

Enter

Jo. 3<sup>rd</sup>

Sept 4/77



James Gillewaters

v<sup>s</sup>

} Lee Clay

Sanders H. Levey et al } 2

This cause came on this 2<sup>nd</sup> day of April 1877 to be heard upon the propoers heretofore read in the cause the report of H. J. Morgan Court., & ~~was~~ argued by counsel, and it appearing to the court that the said report has been filed the length of time required by law, & there being no exceptions thereto it is adjudged ordered & decreed that statement N<sup>o</sup> 4, filed with said report be and the same is hereby confirmed, and it is adjudged ordered & decreed that ~~the~~ plaintiff recover of said Sanders H. and W. Levey the said sum of \$1001. <sup>75</sup>/<sub>100</sub> with interest from the 1<sup>st</sup> March 1877 till paid, and it is further adjudged ordered & decreed that unless the said debtors or some one for them pay the said sum of money with interest as aforesaid & the costs of this suit within 30 days from this date then L. J. Deane who is hereby appointed a commissioner for the purpose sell so much of the interest of the said debt in the land in bill mentioned as is necessary to pay said debt interest & costs aforesaid on a credit of six, twelve and eighteen months with interest from day of sale, except as to the costs of the suit, costs & commission of sale which shall be paid in cash, the commissioner will advertise the time & place of sale by posting notice thereof at the front door of the court house & in at least one place in the neighborhood



of the land for thirty days before the day of sale  
 notifying of the time place & terms of sale.  
 The commissioner will take bond of the purchaser  
 with good personal security & retain the title  
 until the purchase money is fully paid & he will  
 report his action to this court & this cause is  
 continued.

James Killebrew

vs Z. Deane

Saiders Agency et al

March Term 1877

Entered page 036.

James W. Orr. clk.

Enter

J. A. K

ap 5/77

11.81

193

13.74

2.60

16.24



James Stillwaters Plaintiff

vs

In Chancery

Sanders H. Lacey et al. Dfts

<sup>8<sup>th</sup> day of December 1876</sup>  
This cause came on this day to be

again heard upon the bill of complainant and exhibits filed therewith, the answer of Defendants and joinder therein, the answer of the defendants S. H. Lacey H. H. Lacey and Andrew Lestament and general replication thereto the deposition of witnesses and was argued by counsel on consideration thereof the court doth overrule the said ~~answer~~ and upon further consideration thereof and for reasons appearing to the Court it is adjudged ordered and decreed that the contract or sale of land made by the defendant Sanders H. & H. H. Lacey to the Plaintiff James Stillwaters on the 23<sup>rd</sup> day of November 1873 be and the same is hereby cancelled and annulled, that the said Sanders H. Lacey be and he is hereby perpetually enjoined and inhibited from any further proceeding to collect the said judgment obtained by him for the benefit of Andrew Lestament against the complainant on the note which became due and payable on the 1<sup>st</sup> day of October 1874. That himself all other persons in and they are hereby perpetually enjoined and inhibited from collecting the balance of the said bond of indenture



by said Lilliewaters to said Sanders & Lavoie  
which become due and payable on the 1st day  
of April 1874 and that he and all other per-  
sons be alike enjoined and inhibited from col-  
lect the said bond which become due and  
payable on the 1st day of October 1876, and that  
the said Defendant Sanders & Lavoie deliver  
up the two last named bonds <sup>the clerk of this court to</sup> to be filed  
~~them~~ with the papers of this cause for cancella-  
tion and ~~it appearing to the court that said~~  
complainant <sup>claiming that he</sup> had paid to the defendants be-  
fore the institution of this suit the sum of  
\$845.00 and <sup>it being admitted that</sup> ~~that~~ he has enjoyed the use and  
benefit of said land since his purchase there-  
of the court is of opinion that an account  
is necessary to show how much is due to said  
complainant on account of his payment on  
his said purchase it is therefore adjudged  
ordered and decreed that Henry J. Morgan  
one of the commissioners of this court after  
giving due notice to the parties proceed to take  
state and settle the account between the parties  
taking into consideration the sum paid by  
the plaintiff to the defendants and the inter-  
est thereon the permanent improvements  
which have been made on said lands, if any, and  
the value thereof and charging him with  
the rents and profits of the land during



the time he has occupied the same and  
anything else which he may deem  
material to be stated and he will re-  
port his proceedings to the next term of  
this court till ~~which time this cause is~~  
~~continued~~ and it is ordered that on or before  
the 1<sup>st</sup> day of March next, the plaintiff surrender  
to the defendant W. W. Swaney, the possession of  
the premises in controversy, and the Commissioners  
will calculate it up to that period, and the plaintiff  
~~shall hold of the said W. W. Swaney~~ and this cause  
is continued



James Callaghan

vs. 3 Decem

S. H. Davis et al

Entered Order Book

Page 5-97

R. W. Davis D.C.

Enter  
Page  
5-97  
Dec. 96



James Stillman

vs

Leahy

St. Mary's

This cause came on for  
hearing April 1886. On motion of Counsel  
Leahy is given leave to file his objection to the  
admission of St. Mary's. St. Mary's and  
Leahy and thereupon he replies generally  
to the said answer, and joins in the answer  
filed; and on his motion the deposition of  
James Stillman, Solomon Owens, John  
Stearns and John A. Moore are admitted  
and leave is granted the said Stillman to  
restate the same and this cause is continued  
to the next term.



James Williamson

75.

Banders & Linnay & Co.

Continental Order Book,

page 815.

James W. M. Corp.

James W. M. Corp.  
Apr. 6. 1876  
J. C. K.



James Gillmovers Plaintiff

vs.

In Chancery.

Sanders & Leracy et als.

The Plaintiff in this cause having by his bill prayed that Sanders & Leracy, his agents, attorneys and assigns and each of them be enjoined and inhibited from the collection of three several notes executed by the Plaintiff to said Sanders & Leracy on the day of 1873 for the sum of \$500<sup>00</sup> each. The first of which notes became due and payable on the day of 1874. The second became due and payable on the 1st day of October 1874 and upon which the said Sanders & Leracy & as the benefit of Andrew L. Stuart has brought his suit at law now pending in the Circuit Court of Lee County Virginia and on which the plaintiff shall confess judgment at law. The third and last of which notes is to become due and payable on the 1st day of October 1876. The Court therefore upon the confession of the judgment aforesaid and upon the Plaintiff executing bond in the sum of \$1000<sup>00</sup> with good security grants the Plaintiff assumpsit action against the defendants and each of them their agents assigns and attorneys from collecting the judgment hereby confessed. The balance still due on the 1st mentioned note and the note which is to become due and payable on the 1st day of October 1876, and each and every part of them or either of them when the Plaintiff shall execute the bond.



James Gillenwater  
vs { order granting  
{ an injunction

Sanders & Leracy et als

Entered order Book page  
455 + 456.

James W Orr, Clerk.

Enter  
in G.A.R.

Sept 3/75

having received of him with sufficient security, before  
the Clerk of this Court. Then the Plaintiff shall  
have the full benefit of this injunction



Commissioners Office Knoxville 10<sup>th</sup> March 16<sup>th</sup> 1877.  
James Gillenwaters Deft. }  
vs. } Indebted,  
S. H. Livesay & al Deft. }

The deposition of James Gillenwaters John R. Babb. Daniel Roberts and others taken on the 16<sup>th</sup> of March 1877 at the time of taking an account of payments rents & improvements referred to in a decree in the above cause entered on the 8<sup>th</sup> of December 1876.

The said Gillenwaters being sworn swears and says In 1873 I bought of S. H. Livesay the land in the bill and proceedings mentioned for which I was to pay \$2000.00

In January 1874 the day of the month not now remembered I paid to S. H. Livesay through my brother William Gillenwaters of Scott County the sum of \$500.00 in horses at cash prices, at the time these horses were delivered said S. H. Livesay and W. H. Livesay were both present, and for this sum no note or bond was given.

In March ~~1874~~ I paid or April 1874 I made a further payment of \$290.00 \$270.00 of which was paid to S. H. Livesay, and \$20.00 the residue was paid to W. H. Livesay, but S. H. Livesay was present at the time I paid the \$20.00 to W. H. Livesay, and directed me to pay it to him.



Dr H. Haggard -  
Johns River  
of the Company and  
to for the  
please me this  
as they are  
about the 10th of  
V.R. Surgeon



In April 1875. I paid to a man by the name  
of <sup>Thomas</sup> Brennan \$100.00 who held one of my notes given  
for said land and to whom the same had been  
assigned or delivered by S. H. Livesey

In March 1875. I paid S. H. Livesey \$5.00 and  
this payment was made in this way. One of  
my notes had been delivered to Mr Hagan for  
suit and on the 24th of March 1875. Mr S. H. Livesey  
directed Mr Hagan to give me credit for said  
five dollars, and the order for this purpose  
is hereto attached as a part of this deposition

These credits since the \$500.00 will I think  
all be shown on the notes given by me if the  
defendants will produce them but the dates  
may not be stated exactly correct

I got possession of the land about the 12th  
day of February 1874 and from that time down  
to March the 1st 1877. is three years and about  
16 or 17 days. During the first year the  
land was not profitable, but taking the  
same upon an average for said period, I think  
the same worth per annum about \$70.00 and  
no more

As to permanent improvements I think I have  
cleared about 15 acres of new land which I think  
is worth at least \$100.00. The land was formerly  
heavily timbered and required a great deal  
of labour to fit it for cultivation



During said period I have built and erected upon said land a Cabin House and Corn Krib which I think was and is well worth \$50.00 The Cabin House is a one story building 18 feet by 12 feet up with of round logs, Sealed down on one side within, and covered with boards nailed on.

The Corn Krib is made out of Split Timber Smoothed on the inside, is 20 feet long, 7 or 8 wide, and 8 or 10 high and covered with boards held down by poles

I have laid a line of wooden pipes to conduct the water to my house about 540 or 550 yards and in doing this work and hiring it done I think I have expended about \$75.00 at the least, and I think it has added to the value of the land double that sum, for until that was done there was no access to water

The principal part of said Pipes are made of cedar, which I hauled or had hauled about 1 1/2 miles, and the residue thereof is chestnut

During said period I bought \$20.00 worth of improved fruit Trees and set them out in said land nearly all of which lived and are now doing well and they have now had two years growth and this improvement I think is worth at least \$40.00

To the House in which I live I have put a lightning rod which cost me \$7.00 I think it is worth the same



I have made and laid up about 1500 new rails which I think is worth \$15.00

I have <sup>paid</sup> the taxes upon said lands for two years but the exact amount I do not know, but think it <sup>will</sup> amount to near \$14.00 The land was assessed in Leveauxs name but he said I must pay the taxes which I did but it was in his name and the amount I so paid was or ought to have been credited in his ticket

I bought about 650 feet of plank for the purpose of re laying one of the floors in the house and paid for the same \$6.50 in cash. Out of this plank I had a batten door shutter made & some facings to the door put up which is worth about \$2.50, and this and what I paid for the plank, will make about \$9.00, the plank now used in making said door shutter and facings, is still there on the premises.

And further this witness saith not.

James Gillenwater

The said John N. Babbs being sworn says

I know nothing about the Door Shutter facing plank or taxes spoken of by Mr Gillenwaters but I know the fact that he has made some new rails but the number or value I do not know.

The customary price for making and putting up new rails is one dollar per 100.

I know that Jeff bought and put a lightning rod to the house, but what it cost, or its value,



Geo. H. Babb. 1 day as witness for Jeff. 50

Daniel Roberts sworn says I have just heard read the deposition of Mr. John H. Babb. and I now hereby adopt all his statements for Jeff. 1 day. 50

I cannot state, I know the Jeff purchased and set out fruit trees but do not know what they cost. I think they are now worth \$35.00

I know the Jeff brought water to his house in pipe logs  
Some considerable distance, and think that improvements would have cost about \$70.00 and I think it is - really worth that sum to the premises

As to the Leabins House and Corn Crib spoken of by Mr. Gillenwaters I know that he had them put there, and my estimate of their value is \$35.00

As to the clearing of land, I do not know the quantity cleared by the Jeff but there is a considerable area of the same. And in looking over it after it was cleared my estimate of the value of clearing it is about \$80.00

I am well acquainted with the land in controversy in this Suit And in the condition in which it has been since the Jeff has been in its possession is, that it is reasonably worth about \$72.00 per year

And further this witness says not.

John H. Babb

Daniel Roberts being sworn Says I have just heard read the deposition of Mr. John H. Babb. and I now hereby adopt all his statements







The deposition of John A Moore John Osborne  
~~taken before me~~ <sup>a Justice of said County,</sup> ~~at the dwelling house of~~  
John A Moore in Lee County Virginia on the 11<sup>th</sup> day  
of August 1876, pursuant to notice hereto attached  
which depositions are intended to be read as ev-  
idence on behalf of the plaintiff in a suit in  
chancery now pending in the Circuit Court of Lee  
County Virginia in which James Gillenwaters is  
Plaintiff and Sanders & Lerasy and others are  
defendants. the plaintiff and, W<sup>m</sup> W<sup>m</sup> Lerasy  
~~and~~ <sup>St Lerasy & Andrew Testament there</sup>  
and of the defendants being present

John Osborne a witness of lawful age being  
first duly sworn deposes and says.

Question by complainant. Were you present at the  
time W. W. Lerasy executed his title bond to James  
Gillenwaters, if so, did Gillenwaters give up to them  
the ~~bond~~ title bond of St Lerasy? and at  
that time, ~~what~~ did the said Lerasy repre-  
sent the title to said land?

Answer I was present when W. W. Lerasy executed his title  
bond to said Gillenwaters. I don't know whether Mr  
Gillenwaters gave up to St Lerasy a bond executed  
by him to said Gillenwaters or not, and W. W. Lerasy  
at that time represented the title to ~~said land~~  
to be good.

Question by Defendant Did ~~not~~ I not see that time  
~~say~~ to Mr Gillenwaters that if he had any  
doubts about the title to said land that I would



take it back and repay to him his money?

Answer, by Witness. At that time W<sup>m</sup> Leary told Mr Gillenwaters that if he had any fears about the title to said land that he would take it back and repay him his money?

Question by complainant Did he propose to pay the money to Mr Gillenwaters at that time or did he want Mr Gillenwaters to give him time?

Ans. I dont recollect anything about that.

Question by Defendant ~~S. H. Leary~~. Did I not at that time pay some money to W<sup>m</sup> Leary in your presence,

Ans. Yes Sir I saw you pay him some money but do not know the amount. nor what for.

And further this deponent saith not.

John Astor

John A. Moore another witness of lawful age being first duly sworn.

Question by Plaintiff. Now you present when I purchased the land. now in dispute if so to whom did I execute my notes and who found ~~himself to be the owner~~ said land to me?

Answer. My best recollection is that I foreclosed the notes for Gillenwaters and the bond to him. and my best recollection is that the bond was executed by S<sup>t</sup> Leary and I think the notes were made payable to him. my recollection standing



at the time was that at that time ~~S~~ Lerasy was holding this land to secure him from harm as the security of W. W. Lerasy in a bail bond to the United States Government and I suppose the notes were taken <sup>to himself</sup> for the same purpose. Question by same. How did S. H. Lerasy and W. W. Lerasy represent the title to said land?

Answer. W. W. Lerasy represented the title to be good. I do not recollect approving W. W. Lerasy say any thing at all in reference to the title. I have heard W. W. Lerasy say often since that the title to said land was good.

Question by same. Were you present when James Gillenwaters gave up the bond of S. H. Lerasy and took the bond of W. W. Lerasy, if so please state as nearly as you can all that occurred at that time.

Answer. I was present at the time the bonds were exchanged. Mr. Gillenwaters seemed very reluctant to exchange said bonds. he expressed fear of the unsoundness of the title to said land and if the title was not good he looked upon the bond of S. H. Lerasy as being better to him than W. W. Lerasy's bond would be. but after the repeated assurances of ~~persons~~ those present that it would all be right he Gillenwaters gave up the bond of S. H. Lerasy and took that of W. W. Lerasy.

Question by same. Did you ever hear any other



conversation between W H Lacey and Gillen  
waters in reference to this land if so please state  
what it was?

Answer. I at one time went with W H Lacey to see Mr  
Gillenwaters in reference to the matters between  
them. Mr. Gillenwaters then proposed to Mr Lacey  
to take the land back, but Mr Lacey stated  
that he could not pay him the money back  
that he Gillenwaters had paid to words said  
land unless he would give him time but  
the time which he proposed was longer than  
Mr Gillenwaters said he could wait. This  
was after the bonds were exchanged.  
And further this deponent saith not:

John A. More

Virginia Lee County Court

By Stokely Dawson a justice of the peace in and  
for said County do certify that the foregoing deposi-  
tions were taken sworn to and subscribed before  
me ~~at~~ <sup>and for the purposes</sup> the time and place mentioned in the  
caption and that by consent of parties they  
were reduced to writing by C. T. Duncan

Given under my hand this 11<sup>th</sup> day of August  
1876

Stokely Dawson J. P.

The further taking of depositions in this  
cause is by consent of parties adjourned to  
the law office of Morrison & Ayers in Restell  
ville Va on Friday the 26<sup>th</sup> day of August 1876  
Given under my hand this 11<sup>th</sup> day of August 1876

Stokely Dawson J. P.

Filed Aug 29th 1876



Page. (1)

The Deposition of <sup>and others</sup> Stokley Lawson,  
Taking before me Thomas McPherson, a Justice of the  
peace for the County of Lee pursuant to a Notice  
herunto annexed, at <sup>the</sup> dwelling house of Thomas McPherson  
on the 6<sup>th</sup> day of March 1876, to be read as evidence  
on behalf of Wm. W. Levisay, in a certain action in  
equity depending in the Circuit Court for the County  
of Lee. Wherein James Gillenwaters is plaintiff and,  
Wm. W. Levisay is defendant,

Stokley Lawson, a witness of law-full age  
being duly sworn deposes and saith

Question by Plaintiff Levisay,

was you present at the time that S. H. Levisay  
lifted his bond from James Gillenwaters and  
Wm. W. Levisay executed his bond, to said Gillenwaters  
and if so go on and state what conversations took  
place between Wm. W. Levisay and James Gillenwaters  
in regard to the title to the land that said  
Gillenwaters purchased of said Wm. W. Levisay.

Ans by witness

I was present at the time said Levisays &  
Gillenwaters canceled their bonds, and also  
there was some conversations between Wm. W.  
Levisay and James Gillenwaters, in regard to the  
title of said land and Wm. W. Levisay told  
Mr. Gillenwaters if he had any fears of the  
title of said land he would take the land back  
and pay him his money back, and further this  
deponent saith not,  
Stokley Lawson



S. H. Levisay another witness of lawful age being duly sworn deposed and saith,  
 Question by the plaintiff,

did you or not have any thing to do in regard to selling the land in controversy to James Gillenwaters if so go on and state what, what you had to do with it,

Ans by witness

I had nothing to do with selling <sup>the land</sup> more than executing my bond to said Gillenwaters for a writ. The title at that time was in me. Wm. W. Levisay made me a deed to the said land to secure me as his security at Abingdon he was at that time in suit at Abingdon and when he was released I had nothing more to do with the land, and I also lifted my bond from James Gillenwaters and Wm. W. Levisay executed his bond in the place of mine and I also made Wm. W. Levisay a deed back to the land,

Cross examination by defendant

Question by defendant Gillenwaters

did you or not come to me to get me to exchange bonds.

Ans by witness I did, from the fact that Wm. W. Levisay was released from his ~~liability~~ <sup>liabilities</sup> at Abingdon and that the land was only in my hands to secure me as his security.  
 Question by the defendant,

at the time you come to me to get me to exchange bonds did I or not tell you that I did not want to do it until I got some instruction in regard to the writ of said land

Ans by witness

you stated to me at the time I went to get you to take Wm. W. Levisay bond in place of mine that you did not want to do it until <sup>I you said you</sup> got some advice in regard to the writ to said land, I had understood that they was some doubts in regard to the title of said land.

Question by same,

did I or not tell you at the time you ask me to change bonds that I would go and get council against a certain day, and if I got council to satisfy me that the title was good, I would exchange bonds.

Ans by witness, I think you did state to me at that time that you would go and get council and if you found the title was good you would change bonds, and also we met on the day we set to meet, and Mr Gillenwaters refused to change bonds, from the fact that he had not got <sup>council</sup> ~~instruction~~ sufficient to satisfy him that the title was good, but after some conversation Mr Gillenwaters did agree to exchange bonds. I then <sup>made</sup> ~~agreed to make~~ the writ back to Wm. W. Levisay, and then we did exchange bonds,

and further this deponent saith not,

J. H. Levisay

Andrew Testament, another witness of lawful age being duly sworn deposed and saith,

Question by plaintiff Levisay,

was you or not present when James Gillenwaters and Wm. W. Levisay and S. H. Levisay had a conversation in regard to changing bonds, and if



so please state what that conversation was.  
Ans by witness

There was some talk between said parties in regard to the right to said land and Wm. W. Levisay, to Mr Gillenwaters if he had any fears of the right to said land he would take the land back and pay him his money back.

Question by same.

did you or not have any thing to do with selling the land, in controversy to said Gillenwaters

Ans by witness

I did not, and further this deponent saith not. Andrew <sup>by</sup> Testament.

The taking of said depositions is postponed before Estokley, Lawson, a justice of the peace, for the county of Lee at the same place and on the 6<sup>th</sup> day of March 1876, given under my hand this the 6<sup>th</sup> day of March 1876

Thomas, McPherson, S. J.

Thomas McPherson another witness of lawful age being duly sworn deposed, and said

Question by plaintiff Levisay

was you or not present when S. H. Levisay lifted his bond from James Gillenwaters and Wm. W. Levisay, give his bond to said Gillenwaters for a right to said land, and if so go on and state what you understood about it

Ans by witness.

I was present at the time they changed bonds and there was some conversation in regard to the



wright to said land and Mr Gillenwaters  
seemed to be a feard. of the title to said land  
and Wm. W. Levisay to Mr Gillenwaters that  
if he had any fears of <sup>the</sup> wright he wood take  
the land back and pay him his money back.

Cross examination.

Question by defendant. Gillenwaters  
did or not I tell you and others that I was  
afraid of the wright to said land

Ans by witness

you told me that you was not satisfied  
with the wright in condition it was in and  
after me and others persuaded you that the wright  
was good you then did agreed to take Wm.  
W. Levisay bond. in place of S. H. Levisay bond.  
and alsoe Wm. W. Levisay told Mr Gillenwaters  
at the time they changed bonds. that he had no  
fears of the wright still

and also further this deponent saith not  
Thomas. McPherson,

Virginia, Lee county, to wit.

I Thomas McPherson Justice of the Peace in and for the  
County and State aforesaid, do certify that the foregoing  
depositions of Stephen Leason, Andrew Leston, S. H. Leason,  
were before subscribed and sworn to before me, at the time  
and place and for the purposes in the Caption mentioned.  
Witness my hand this 27th day of March 1876.

Thos. McPherson. J. P.



Dofts costs  
to 80 10 June 1877.

Wm W. Corcoran

at 100 10 June 1877

James W. Corcoran

from 100 10 June 1877

to 100 10 June 1877

James W. Corcoran

18 70 4 70

18 70 4 1

500

168

50168

27002

231.88

21.00

211.68

4.2

84572

105

9.57

James W. Corcoran 2.00

" " " "

Wm W. Corcoran .80

" " " " .80

" " " " .80



Virginia:


Lee County to wit:

This day J. H. Redman personally  
came before me the undersigned  
and made oath that the copy hereto  
annexed was the only service or  
copy that was ever made upon  
him of the rule awarded in the  
Chancery cause of James Gillum v.  
vs Sanders, H. Levey et al., and that  
no other copy or service of said  
rule was ever made upon him  
affiant further states that Solomon  
Overton is dead died some time  
in March or April, 1879

Given under my hand this the 28<sup>th</sup>  
day of November 1879

James H. Orr, Clerk



James Gillenwaters  
vs  Affidavit  
Sanders & Levee et al.



James Gillenwaters

Plffs.

vs.

Sander H Lacey & also

In chancery  
Defendants

The undersigned who was appointed  
by a Decree of your Honors Court rendered and  
pronounced on the day of March 1877. a com-  
missioner to sell the interest of H. H. Lacey in  
the tract of land in the bill mentioned would  
respectfully report that in pursuance of  
said Decree he advertised said land for  
sale on the day of July 1877. But that be-  
fore the the day came an said land had  
been levied on by James B Scott one of the  
deputy Sheriffs of said County to satisfy a judg-  
ment in favor of the Commonwealth, vs H. H. Lacey  
late Sheriff of said County, and his sureties in  
his official bond as Sheriff as aforesaid. As a  
cloud was thus thrown upon the title to said  
land your Commissioner was of opinion  
that said sale should be postponed until  
the Sheriff had had time to proceed under his  
judgment or at least for the time being.

all of which is respectfully submitted

C. F. Duncan Court.



James Gillenwaters  
vs ~~Report of James~~  
~~Duncan. vol.~~  
S. H. Leracy et al.

Filed Aug 17th 1877.  
James W. Orr. clk.



James Williamson

Plff.

vs.

J. M. Chay

James H. Lacey et al.

Def.

To the Hon. John A. Kelly Judge of  
the Circuit Court of said County.

The undersigned who was by a former  
decree of the Circuit Court of Lee County Virginia  
in directed as commissioner to sell so much  
of the interest of W. H. Lacey in the land in  
the bill and proceedings mentioned as  
would be sufficient to pay the sum decreed  
to the complainant being \$1001.25 with inter-  
est till paid and the costs of suit and  
commissions of sale, at the last term of  
this Court reported the fact, that since the  
 rendition of the decree aforesaid, that said  
land had been sold as to satisfy an execution  
in favor of the Commonwealth vs. W. H.  
Lacey and others his securities in his bond as  
late Sheriff of said County. and that such being  
created a cloud upon the title to said land, and  
that it was impractical at that time to sell  
the same, Your Commissioner now being  
dune to report that said land still exists  
and that the judgment of the Common-  
wealth aforesaid seems to constitute a  
perfect lien upon said land which per-  
haps will exhaust the whole thereof  
under the circumstances, The moving



and every part thereof being still unpaid  
your Commissioner is of opinion that  
an execution should be ~~issued~~ <sup>issued</sup> on said  
writ ~~do~~ against the said Sanders  
& Mr Levy and the money made out  
of their personal estate

All of which is respectfully  
submitted.

To T Duncom  
Commissioner

James Gillenwater,

vs- 3, Levy's Report

Sgt Levy's Report

Filed Nov-1st 1877.  
Jas H Orr, Clerk.



Commissioners Office Knoxville O<sup>h</sup> March 1877  
James Ellenswaters Peff

vs.  
S H + W. W. Liversay Defts } In Chancery

To the Hon John A. Kelly Judge of the  
circuit Court of Seck County.

In order to take an account of payments,  
of rents and profits, and of permanent im-  
provements directed by a decree in this  
cause of December 1876. I attempted to give  
the parties, (that is the Peff and Defts S. H. Liversay)  
such notice as is shown by the paper here filed  
marked (A B) One copy of which was sent  
by mail to each, but Mr Liversay subsequently  
informed me that he did not receive the notice  
in time to attend at the time and place  
indicated, while the Peff did attend and  
brought with him two witnesses John H. Babb  
Daniel Roberts whose depositions with that  
of the Peff I reduced to writing on the 16th  
of March 1877. and herewith, is the same marked  
(A C) and by reference thereto it will be seen that  
as between himself, and his two witnesses with  
reference to rents and profits, and permanent  
improvements, there was such a great difference  
of opinion between the Peff and them touching  
said two matters, but as to these two equities  
as we shall presently see these depositions



have nothing to do. And the only purpose they can serve is to show the payments made by the Jeff to the dfts, and Mr Gillewater alone testifies in relation to them in the first part of his deposition.

As the dfts were not present when said depositions were taken I continued the matter until the 19<sup>th</sup> of March, and again notified them to be then before me with their proof, and accordingly W<sup>m</sup> Linsay, with three or four made their appearance, and I therefore soon found that there would be a wide difference of opinion between these witnesses and those of the Jeff in regard to rents and profits and the value of permanent improvements.

To avoid a wide conflict in the testimony and to save the labor time and expense of taking the depositions of many witnesses, I advised the parties to mutually select three competent and disinterested gentlemen to go upon the land, look at its quality, and at the improvements, and let them fix the value of each, and that they should then abide by the estimate of such witnesses. To this proposition they readily acceded, and I therefore prepared such submission containing <sup>in</sup> the names of the gentlemen which they signed and is now herewith filed as a part of this report marked (A D) to which



is attached the estimated value of the rents and profits, and permanent improvements as fixed by said three persons:

We now come to the enquiries and matters to be reported on, the first of which is, as to the payments made by the Deff to the defendants toward the purchase price of the land in the bill and proceedings mentioned.

The only witness who testifies in relation to payments, is the Deff himself, and from his statement it appears, that at different times and in different ways, he has paid to the defendants and their assignees the sum of \$895.00 toward the purchase price of the land.

I now file herewith another paper marked (A.E) on which there are four separate statements.

The first is a statement of the several items of payment, and where the precise date is not given and the month in which it was made is given, in such case I have put each item down as if paid the last day of the month named.

The second shows the rents and profits of the land for 3 years and 16 or 17 days commencing Feb. 12<sup>th</sup> 1874 and ending March the 1<sup>st</sup> 1877 amounting to \$197.71

The third is a statement of the permanent improvements placed thereon during said period amounting in the aggregate to \$162.50 and



The fourth is a stated account between the parties showing the balance due the plaintiff on the first day of March 1877.

In this statement, interest is counted for the Plaintiff from the time of each payment until March 1-1877. but no interest is calculated on the improvements, and on the rents, interest is counted for the defendant from the end of each current year to the first of March 1877, at which time the account thus adjusted there was due the Plaintiff for the balance of payments and improvements the sum of \$1001.25

Since making said four statements, I thought it possible that you might prefer to adjust these matters, without calculating interest either way, and if so such view will be met, by Statement No. 5 on seal paper, and if that statement shall be adopted, then the defendant will owe the Plaintiff \$859.59 March 1-1877.

Neither party has required of me any special statements and I know of nothing special to be referred to.

All which is respectfully submitted

Samuel Morgan Esq



James Gillemwater

vs. { Come's Report

S. H. Livesey & al

Filed Nov 21st 1877  
James W. Orr, Clk.

Commissioners fees \$12.00



To the Honorable John A. Kelly Judge of the  
the Circuit Court of the County of Tazewell  
Pursuant to two decrees entered in the  
Cause of James Gibbons v. the said  
decree H. Gibson, and others, now pending in  
the Circuit Court of the County of Tazewell, one  
of which decrees was entered on the 5<sup>th</sup> day of  
April 1877 and the other on the 4<sup>th</sup> day of April  
1879. The undersigned Commissioner appointed  
for the purpose, pursuant to the terms of the  
said first decree, on the 1<sup>st</sup> day of July  
1879. That said Court do hereby order  
sold the interest of the said J. H. Gibson  
in the lands in the said land proceedings, as  
would be sufficient to satisfy the said decree  
of the 5<sup>th</sup> day of April 1877. Said Sale was made  
on a credit of six months and eighteen months  
except for cost of said commission of sale  
which was to be paid down, after having  
advertised the time, place and terms of sale  
for more than 30 days at three public  
places in said County one of which was  
the front door of the Court House of said County  
and at said sale James Gibbons the plaintiff  
in said suit became the purchaser and being  
the highest and best bidder, at a  
price of \$500. of which sum, \$65.25 was cost  
of said commission of sale, which



who accepted from the amount of sale being  
the sum of \$484.25. The sum was commensu-  
ration, divided into three equal portions  
amounting to \$161.42, for which we took the  
said James Gibson with John  
Roberts for security, and respectively in  
the sum of eight hundred dollars. The security in  
these notes is not only good, but as the whole  
of the proceeds of the sale are due and going to  
the said Gibson with your Commissioner  
same said sum, ample and sufficient.  
The said purchaser did not pay the whole  
amount of the estate down, but he paid before  
the day of sale paid to the Clerk, his cost amount-  
ing to \$13.94 and to the wife in exchange  
for \$1.50 and for the balance of the estate  
amount of sale he paid to me as Commissioner  
\$484.25 which is very good as there is good  
note in my hands for collection amounting  
to upwards of \$600.00 - belonging to said Gibson  
where out of which he has directed me to  
retain enough to be collected to pay the bal-  
ance of said debt. An arrangement which  
I deem satisfactory.

The above sale is in the opinion of your Com-  
missioner so good as can be made  
under the circumstances, as the estate  
land sold by me is truly a life estate.



upon that there is a judgment sum of about  
\$100,000. They wish the purchaser had full no-  
tice and to whom he bought subject, and  
will have to pay. Your Commission there  
from runs ends the Commission of said  
Sale -

Respectfully Submitted,  
Oct 5<sup>th</sup> 1872. C. L. Mason, Comr.



James Hill  
vs Report of  
by Comr. Duncan  
J. H. Croshaw et al.

---

Filed for 13th 1879.  
James H. Croshaw.



Commissioners Office Jonesville Va. Nov. 5 1884.

Sanders H. Leary

Peff

vs.

On a bill of Review

James H. Gillenwaters et. al. Defts

To the Hon. John A. Kelly Judge of the Circuit  
Court of Lee County Virginia:

In order to execute your decree in this cause on  
the 27<sup>th</sup> day of Aug 1884, I caused to come before me on  
the 5<sup>th</sup> day of Nov. 1884, S. H. Leary, John T. Leary, Stokely  
Leeson and Fielding Testament, and I took their depositions  
in writing bearing on the injuries incurred in the cause  
and file herewith the same marked (A B)

The defendant James H. Gillenwaters did not have any  
notice of this my proceeding, but I did notify Mr. J. D. Dunn  
one of his attorneys of the fact that I was about to proceed  
in the premises and requested him to be present, but  
the information I received from him was that he would take  
no further interest in the matter.

The business transaction which gave rise to this suit,  
is so fully and clearly set out in the deposition of said S. H.  
Leary, that I deem it altogether useless and unnecessary  
waste of time and labor to again state the facts.  
I shall therefore only give my conclusions based on such facts.

I am of opinion from the evidence that S. H. Leary did receive  
of James H. Gillenwaters some \$200. \$300 - or \$400. of the purchase  
price of said land and that the same was a part of the notes  
of \$1500.00 executed by Gillenwaters to S. H. Leary



I am also of opinion that at the time W. W. Leavay, executed his title bond to James Gillewates and the latter surrendered the title bond which he held on S. H. Leavay to him, that said S. H. Leavay then and there turned over and surrendered to said W. W. Leavay the residue of the \$1500, notes and that he at the same time and place paid S. H. Leavay paid to W. W. Leavay full money which he had before that time received of James Gillewates toward the purchase price of said land, whether the same was \$200 - \$300 - or \$400, or if he did not pay it in money that he did in some way account for the same so as to satisfy W. W. Leavay in that sense.

As to the residue of the purchase money for the land the evidence shows that James Gillewates executed his bond directly to W. W. Leavay for \$500.00 for said balance, and this note was to be discharged in horses; and the evidence further shows that this note was paid in horses directly by Gillewates to W. W. Leavay; I am therefore of opinion that S. H. Leavay was not at any time chargeable with any thing to any body in account of said horses.

I am likewise of opinion from the facts of the case as they now appear to me that this whole transaction in a court of equity ought to be treated as a business transaction between Jas. Gillewates and W. W. Leavay and if correct in this, and in the fact



that J. H. Severy has fully accounted to H. H. Severy for  
Horses and all money recd, by him on account of the  
notes of \$15000 credited to him and that there is  
said notes to H. H. Severy, then it would seem to  
follow as a natural consequence that said H. Severy  
had no interest whatever in the land and had  
nothing whatever to do with rents, profits, improvements  
and that these were matters in which Tollenwaters  
H. H. Severy were alone interested: And entertaining  
the views already expressed I thought it unnecessary  
to enter <sup>upon</sup> or institute any enquiry in relation to rents  
and profits, or permanent improvements:

All which is respectfully Submitted

Henry J. Morgan Comr.  
Nov. 5 1884.



Sundlers H. Leasing

as. } Cunningham's Report

James H. Gillewater

Filed Nov. 12/1887

J. H. Hyatt C. C.

Cunningham - see p. 50



S. H. Levey

Poff

vs.

On Bill of Review

Jas. H. Gilmour vs. D. J. G.

The deposition of Fidelity Testimony. S. H. Levey  
John T. Levey & Henry Levey taken on the 5<sup>th</sup> day of  
Nov. 1884 before the undersigned Court. To be read as  
evidence on the part of S. H. Levey at the time of taking  
an account ~~therein~~: and making a report in the above  
stated cause:

The said S. H. Levey — a witness of sufficient  
age being duly sworn says:

The United States some years ago, instituted  
a criminal prosecution against W. H. Levey and was  
about to lodge him in jail, and to avoid this, he  
asked me to go his bail, and I refused to go his  
bail, unless he would indemnify me against any  
loss I might sustain on that score. And to do that  
he conveyed to me the land in the bill of proceedings  
mentioned, and although this conveyance appears  
to be absolute, yet both parties understood it to  
be nothing more than a mortgage:

Notwithstanding this transaction while the title to  
said land was in me, said W. H. Levey undertook to  
sell said land to Jas. Gilmour and did so, and  
after they had agreed on terms, they both came to  
me, and wanted me to execute my title deed to said  
Gilmour for a title to the land when it should  
be paid for. And I at first declined to do so, but  
afterward did ~~the~~ execute such deed, with this con-



-ction, that as soon as W. H. Lacey should get clear of said prosecution, I was to convey said land back to W. H. Lacey, and he was then to execute his title bond to said Gillingwaters for said land, and the latter was to surrender any title bond to me and this arrangement was carried out. after said prosecution was ended.

At the time I executed my said title bond to Gillingwaters I was still W. H. Lacey's security as his bond, and to guard my own interest in the matter I required said Gillingwaters to execute to me his bond as purchase money to the amount of \$1500.00 and <sup>for</sup> the residue of the purchase money of \$500.00 said Gillingwaters executed his bond to said W. H. Lacey payable in Horses.

When this last note or bond fell due, at the urgent solicitation of W. H. Lacey I went with him to receive said Horses in discharge of said note, and W. Gillingwaters a brother <sup>and I,</sup> of said James, valued the Horses between said James Gillingwaters and W. H. Lacey, and said James Gillingwaters then ~~there~~ paid W. H. Lacey said \$500.00 out in Horses, and I never owned one of them & had no interest in them. it is true said Horses were brought to my house (but not as my property) and they stayed there for a few days, when W. H. Lacey sent his sons after them and I delivered the same to them.

While I held said James Gillingwaters notes for said \$1500- he paid me some money thereon, but the amount of money so paid was I do not now remember. it is possible that it may have been some \$200. \$300 - or \$400 -



After I had conveyed said land to W. H. Lacey, and he had given his land to Jas. Gilmwaters for a title, and Jas. Gilmwaters had surrendered my title land to me, in accordance with our agreement. I then turned over to W. H. Lacey the balance of said land in Jas. Gilmwaters, and I also paid to him all the money I had received of said Gilmwaters within \$200 - \$300.00.

These transactions were all had and transacted before Jas. Gilmwaters filed his original bill against me and others. These notes and money were turned over by me to W. H. Lacey the same day that he received his title land to said Gilmwaters.

And further this witness with me.

W. H. Lacey

John T. Lacey a witness of 18 years of age being duly sworn says

I am the son of W. H. Lacey, and I know the fact that the money paid by Jas. Gilmwaters in discharge of the \$500.00 note given by him to W. H. Lacey was delivered by my father to him as stated by him in his deposition.

And further this witness with me.

John T. Lacey

Stately Lawson another witness says.

I was present at the time W. H. Lacey conveyed said land to W. H. Lacey and at the same time W. H. Lacey gave his title land to Jas. Gilmwaters and the latter surrendered the title land which he held on W. H. Lacey to him, and at the same time said W. H. Lacey turned over to said W. H. Lacey the notes which had been executed by Gilmwaters to him, and he at the same time paid and accounted to



W. H. Lacey, for the money paid to him and id notes  
by Jas. Guillemont and all seemed perfectly satisfied  
with what had been done.

And ~~further~~ at this meeting Jas. Guillemont  
W. H. Lacey & J. H. Lacey were all there present and  
all this took place before any suit was brought:

And further this: witness with not.

Stokely Lawson

Fielding Testament another witness of lawful age being sworn.

I was present and saw J. H. Lacey deliver to W. H.  
Lacey some the bones known as the Guillemont bones  
And further this: witness with not.

Fielding Testament  
and

Virginia Lee Bounty Trust

I do certify that the foregoing affidavits of J. H. Lacey,  
John J. Lacey, Stokely Lawson & Fielding Testament were  
taken before me, sworn to and subscribed by them the  
5th day of Nov. 1884.

Henry J. Morgan



Sanders H. Loring

27 } Defs.

for Gillman's trial

(A.B.)



Virginia

At a Circuit Court Continued and held for Lee  
County at the Court House thereof September 4<sup>th</sup> 1883.

James Gillenwaters

Plaintiff

vs

J. H. Livacy

Defendants

In Chancery

\* \* \* \* The paper offered as a bill of review is there-  
fore treated as a petition for a rehearing; and as  
such is allowed to be filed; And a Rule is awarded  
against Gillenwaters and J. H. Livacy, to answer  
the same and the cause is continued.

A Copy Left -

J. A. Hyatt clerk



For  
James Stillwaters



Virginia

At a circuit Court continued and held  
for Lee County at the Court House Sept 4<sup>th</sup> 1883.

James Gillewaters

Plaintiff

vs

S. H. Livacy et al

Defendants

} In Chancery

# # # # # The paper offered as a bill of review  
is therefore treated as a petition for a  
rehearing; and as such is allowed to be  
filed: and a Rule is awarded against  
Gillewaters and W. W. Livacy, to answer  
the same and the cause is continued.

Copy Teste-

J. A. Wyatt ckr



S. H. Livacy  
add<sup>4</sup>/<sub>3</sub> copy of rule

James Lillenwaters

---

chd 97

2 copies



John & Walter Roberts  
Sold to W W Leacey  
he conveyed to S H Leacey  
and S H Leacey back to  
W W Leacey and W W L  
Sold to Jas Gullenwater

H. W. Leacey  
To J. Gullenwater  
James Gullenwater

(4)

H. W. Leacey  
with note  
for Gullenwater



Know all persons by these presents that I  
William W. Gersay am held and firmly  
bound unto James Gillenwater in the pen-  
al sum of four thousand dollars lawful  
money of the united States for the true  
performance thereof. he binds himself his  
heirs executors and administrators jointly &  
severally: sealed with his seal and dated  
this 8<sup>th</sup> day of January 1875.

The condition of the above  
obligation is such that whereas the said  
William W. Gersay has this day sold unto  
James Gillenwater a certain tract or parcel  
of land lying and being in the county  
of Lee and state of Virginia containing two  
hundred and fifty ~~acres~~ acres being the  
same more or less being the land whereon  
James Gillenwater now lives and resides at  
includes the buildings and improvements  
thereon the said James Gillenwater lives  
and adjoining the lands of Patrick Leacy  
Thomas Anderson Daniel Roberts and  
Solomon Owens Hugh Golliver and Allen  
Chandler and now when the said  
James Gillenwater shall well and truly  
pay the said William W. Gersay the sum  
of four thousand dollars paid money the  
said William W. Gersay shall make or  
cause to be made a good and sufficient  
warranted title to the above described  
tract of land to the said Gillenwater



his heirs and ~~affairs~~ assigns then the  
above to be null and void otherwise  
to remain in full force and virtue

Given under my hand and seal  
this day and year first above written

Test Thos. McPherson.  
Test John Astor }  
}

~~Witness my hand this day~~  
Wm. W. Gervay  
in att



Lee County Virginia October the 1st 1853.

For Jesse Roberts doth. give 1 to divide his land between his children by conditional lines, for said row begins on a sugar tree hickory and service bush thence running south course to the upper spring thence the spring branch to the wagon Road thence with the cross fence to a sweet gum bush thence to a small branch at the west corner of his his fence and up said branch to the line north east to a stake corner to the Howard survey thence west to two white oaks beginning corner to a 440 acre survey with said line to the beginning.

For David beginning at the same and running to the spring thence southward up the point to top thence turning westwardly with the top of the ridge to the line where the 440 acres crosses and with said line northwardly to the beginning this and a 150 acres and 10 rods of the Daugherty land for David.

For Jesse beginning on a hickory and mulberry corner to the 440 acre survey thence south east keeping the top of the point to cross the wagon road at a red oak thence thence with the line of the old Peach Orchard to the branch thence down the branch to where it is now cutting through a little bottom and till it empties into the same branch again. South 60 degrees East to the top of a point thence Eastwardly with the top keeping the top, turning southward to Howard line North East to Andrews land Daniel's line to the beginning.



For Wallen beginning on a hickory and Mulberry  
cross to the 440 acre survey thence south 43 W to  
a branch, thence down the branch to a hickory in  
a deer lick, thence Eastward to a hick corner to  
the Howard survey thence south 60° 40' E to a white  
oak, thence south 15 W to state line thence East  
with the state line to Jack Andersons line and  
with that line, to the Howard line, thence East-  
-ly to Jesses line, and with Jesses line to the  
beginning, this with a 36 acre joining its survey  
made the 13th 1852, for Wallen.

For John beginning on a hick on the bank of the  
branch, thence south 43 W to a white oak, hick, and  
sugar tree on a steep bank, near a branch, thence  
down the branch, to the waggon road and about the  
same course, to a large poplar and two hickories  
on the state line, thence east with the state line  
to Wallens line, and with the same to the begin-  
-ning, For Mary a survey of 472 acres on  
Newmans Ridge beginning at a white oak on a  
spur near George Wallens this and a survey of  
15 acres joining it in Tennessee for Mary. All the  
heirs to have equally free access to cedar and of  
-ring water all to have free access to it after  
making this divide. All of the heirs after my death  
shall have free access to the above mentioned  
lands with the exception of selling till their  
death and at their death each one of their

heirs shall have their portion of his land, if any  
of the heirs leaves their land the others shall take  
it into possession and have their equal benefits of  
it till he or his heirs shall return.

For Ruthy part of the estate three hundred  
dollars which shall be paid ~~and~~ when the young-  
-est heir is twenty one years old or if one of  
the children should die having no heirs Ruthy  
shall have his land in the place of the three  
hundred dollars or if the money be paid and  
any die without heirs she may pay back  
the money and have the land that is she may pay  
it back with the exception of their own part, if  
paid back it shall be paid on equal part to all  
the heirs if I die before the youngest heir is twen-  
ty one years money shall have the use of all the  
property for the use of raising the children till they  
are all of age then their property may be sold for the  
use of paying the three hundred dollars to Ruthy and  
if it dont fetch three hundred dollars the boys shall  
be equal part of the remainder if Nancy makes her  
her choice to live and remain at this place my  
heirs shall equally bear their part in supporting  
her at this place from the date of the sale till her  
death or if Nancy makes it her choice to live with any  
of the rest of the children they shall equally have the  
part in supporting of her.

If Nancy marries after my death she may have a child



part of the property and leave the land without  
any claim on the children. This as a mutual agree-  
ment and will with me & my children.

James R. Roberts

James R. Roberts and  
Stacey Roberts his wife

Stephen S. Sargent  
his agent

James Roberts will have power to sell or convey the  
above mentioned lands as I please while I live or make  
any other that I think proper and I now say if there  
is any coal mines or minerals found on the different  
land or of lands that all of the heirs shall have  
an equal part in them and I also appoint  
my agent to settle my affairs and see that  
the property goes to the use of raising the children there  
is done at the assignment.

Virginia.

At a circuit court continued and held for  
Lee County, at the courthouse thereof, on Wednesday  
the 11th day of May 1859.

This day the last will and testament, of James Roberts  
was produced in court and proved by the oath of James  
R. Roberts and Stephen Sargent attesting witnesses to  
said will to be the last will and testament of James  
Roberts deceased. Thereupon the same was ordered to  
be recorded and on the motion of Andrew Roberts  
Attorney of administration appointed him, and thereupon he ex-  
ecuted bonds in the penalty of one thousand dollars with



Council D. D. Jeff, Daniel S. Dickinson, John St.  
Allen, James S. Young & Mr. S. Martin as his assistants  
for the faithful performance of such administrative  
duties as may be required of them  
Witness my hand & seal this 1st day of June 1861.



Jesse Roberts  
Copy of Will.

(3)

Due for this copy \$1.50.



I Waller Roberts for and in consideration of four hundred dollars to one in hand paid, the receipt whereof is hereby acknowledged have this day bargained and sold and do hereby transfer and convey to William W. Linsay and his heirs forever a tract of land of land estimated at one hundred acres lying in the County of Lee and State of Virginia, in the Panther Creek Valley, and bounded as follows; - Beginning on a Hickory and Mulberry thence west to a beech thence south to a hickory in a deer lick thence east to a white oak and beech thence S. to the state line to a stake thence North with Noah Andersons line to a white oak thence North East to Grace Roberts line thence with Grace Roberts line to the Beginning, to have and to hold the same to the said William W. Linsay his heirs and assigns forever. I do covenant with the said Wm W. Linsay that I am lawfully seized of said lands have a good right to convey it and that the same is unincumbered, I do further covenant and bind myself and representatives to warrant and forever defend the title to the said lands every part thereof to the said William W. Linsay his heirs and assigns against the lawful claims of all persons whatever In testimony whereof I have hereunto set my hand and seal, this the fourth day of August one thousand eight hundred and seventy two.

Waller <sup>his</sup> Roberts (seal)

Eli Brewer (seal)

George <sup>his</sup> Brewer (seal)

Virginia Lee County to wit: - We Justices of the Peace in the



County aforesaid do certify that Wallen Roberts whose name  
is signed to the writing above or hereunto annexed bearing  
date on the 14th day of September 1872. has acknowledged the  
same before me our County on this the 14th day September 1872.  
Virginia.

Thos. H. McPherson J.P.

Lee County to wit: We Justice of the peace in the county aforesaid,  
do certify that Wallen Roberts whose name are signed to the writing above  
or hereunto annexed. bearing date on the 14th day of September 1872.

Oliver Brewer J.P.

Lee County Court Clerk's office the 21st day of April 1873. The foregoing  
deed from Wallen Roberts of the one part, to W. Lindsay of the other  
part, is admitted to record upon the certificates of Thomas H.  
McPherson, and Oliver Brewer two Justices of the peace in and  
for Lee County State of Virginia.

Teste - Wm. A. Orr D.C.

Attest Teste - John R. Gibson D.C.

11

Wm. A. Orr  
County Clerk of Lee  
Wallen Roberts  
Recorded by Clerk  
No 16 Page 3678  
John R. Gibson  
Dec 1872



This Indenture made this 24th day of May eighteen hundred and seventy three between William W. Livesay and Jane his wife of the county of Lee and State of Virginia of the first part and Sanders W. Livesay of the county and state aforesaid of the second part Witnesseth, that in consideration of the sum of one thousand five hundred dollars in hand paid the said William W. Livesay and Jane his wife do grant unto the said Sanders W. Livesay a certain tract or parcel of land lying and being in the county and state aforesaid on the waters of Blackwater and part of the home tract of land of Jesse Roberts deceased, and bounded as follows to wit: Beginning on a hickory and Mulberry west to a beech, thence south to a hickory in a deer lick, thence east to a white oak and beech, thence south to the state line to a stake thence North with Cook Andersons line to two white oaks on Hoards line, thence East with Hoards line to a white oak, thence North East to Jesse Roberts line, thence with said Roberts line to the beginning; Another portion, Beginning on a beech thence West to a white oak, beech and sugar tree on a steep bank of a branch, thence south down the branch near the wagon Road thence crossing the road through a straight line to a poplar and two hickories on the state line thence East with the state line to Wallen Roberts line, thence with said Roberts line, to the Beginning on a white oak, beech and sugar tree, thence West with Samuel Roberts line to the state line, thence East with the state line to a poplar and two hickories, thence North to the beginning, and the said William W. Livesay and Jane his wife agrees for themselves and heirs together with all and singular the appurtenances thereto belonging to the said



Sander H. Livesay and his heirs and assigns free from the  
claims of them the said William W. Livesay and his wife or  
their heirs and of all recovery persons who enter do warrant  
and defend forever by these presents in witness whereof the  
said William W. Livesay and Jane his wife have hereunto  
set their hands and fixed their seals the day and year first  
above written

W. W. Livesay }  
Jane W. Livesay }

W. W. Livesay Seal

Jane W. Livesay Seal

Virginia, Lee County to wit: I, Thomas McPherson a Justice of  
of the peace in the county aforesaid, do certify that W. W. Livesay  
a party to a certain deed bearing date on the 24th day of May  
1873 and hereunto annexed personally appeared before me in  
my county aforesaid and acknowledged the same to be his act  
and deed and does not wish to retract it: Given under  
my hand the 24th day of May 1873.

Thomas McPherson J.P.

Lee County, <sup>Court</sup> Clerk's office May 26th 1873. The foregoing deed from  
William W. Livesay and Jane his wife of the one part, to Sander  
H. Livesay of the other part, all of Lee County Virginia, was  
this day acknowledged before me by the said Jane Livesay  
to be her act and deed for the purposes therein mentioned,  
and the said Jane Livesay being examined by me, privately  
and separate and apart, from her said husband and having the  
deed aforesaid fully explained to her acknowledged that she  
had willingly signed and executed the same, and wished  
not to retract it, and said deed is admitted to record.

Wm. H. Orr Clerk  
John R. Wilson Secy



W. W. Linscott  
copy of Seed  
W. W. Linscott

(6)

See for this 60 cts



# Commissioner's Office,

Jonesville, Va., *March 12<sup>th</sup>* 1877.

*James Gillenwaters* —  
AGAINST

*S. H. Liversay & others*

Plaintiff,

Defendant. }

IN CHANCERY.

The parties to this suit, and all others interested are hereby notified, that at my office. in Jonesville, on the *16<sup>th</sup>* day of *March* 1877, I will proceed to execute a decree of the Circuit Court of Lee county, entered in the above styled cause, on the day of *December* 1876, (of its terms and requirements the parties are required to take notice and act accordingly), at which time and place all parties interested are required to appear and to produce and bring with them all necessary papers and such witnesses as they may desire to introduce touching any matter about which oral testimony may be desired.

HENRY J. MORGAN, Com'r.



James Gillewatus

vs. } Notice

S. H. Livesay & al

March 16 1877.

Copies of this notice  
was sent by mail  
to the Ref + Dist Ct.  
Livesay about the 12th  
day of March 1877.

H. Morgan

(A B)



James Gillmanwater Deft }  
 vs. } In Lohy  
 S.H. + W.H. Lewisay + al Defts }

A conflict being likely to arise in this  
 Suit as to the testimony in relation to the  
 rents and profits of the land in controversy and  
 the permanent <sup>improvements</sup> placed thereon by the Deft-  
 to abiate which, it is hereby agreed to refer  
 those questions to Austin Bledsoe Thomas A.  
 Anderson and John Baker and their  
 estimate of said rents, and of the value of  
 said improvements shall be binding and  
 conclusive upon the parties

March the 20th 1877. James Gillmanwater  
 William W. Lewisay

Having looked over the premises above referred  
 to, and heard the statement of the parties and  
 the evidence. We the said Bledsoe Anderson &  
 Baker after being duly sworn to render a  
 true and impartial judgment as to the  
 annual rental value of said land, and the  
 permanent improvements placed thereon by  
 the Deft are of opinion as follows

That said land is worth per year about	\$65.00
That the clearing done by Deft is worth "	\$55.00
That, building of house & outhouse worth about	\$20.00
That " chain of Pumph logs &c. " " "	\$30.00
" " improvement in the way of fruit trees.	\$25.00
" " The amount of plank bought,	\$10.00



That the making of new rails is worth \$10.00  
That the Taxes paid for two years amounts to \$12.50  
Given under our hands this day of March 1877

Thomey A. Anderson

John W. Baker

Auston<sup>his</sup> + Bledsoe  
mark

James G. Wilcox

W. S. Sargent

S. H. W. Sargent

A.D.



S.H. & W.W. Livesay

To James Gullenwaters

1874 Jan 31	To Horses & freight year toward Land	500 00
" April 30	" Cash paid year " "	290 00
1875 April 30	" Cash " year assigned toward Land	100 00
" March 31	" Cash " year toward Land	5 00
	Total Sum paid year this amount	895 00

James Gullenwaters

To S.H. & W.W. Livesay

1874 Feb.	To rent of land sold year, from Feb 12 <sup>th</sup> 1874. to March 1 1877. being 3 years and 17 days at \$65.00 per year amounting to this sum	197 71
-----------	---	--------

S.H. & W.W. Livesay

To James Gullenwaters

From Feb 1874		
'to Feb 1877.	To clearing and improving wild land	55 00
	" Building rabbit house & corn crib	20 00
	" Bringing water to house in pump & logs	30 00
	" Buying and setting out fruit Trees	25 00
	" Buying plank and refencing clover	10 00
	" Making and putting up new rails	10 00
	" This sum for taxes paid by one on land for 2 years	12 50
	Total Sum for improvements . . .	\$162 50

For 4<sup>th</sup> Statement see next page



S H &amp; W W Livesay

To James Gullenwaters

1874 Jan 31.

To The value of horses &amp; paid exp for land

" Interest on Same to March 1/77 3 years 14 mos

" Cash paid exp April 30th 1874

" Interest on Same to March 1/77 24 10 m

" Cash paid exp April 30th 1875

" Interest on Same to March 1/77

" Cash paid exp March 31st 1875

" Interest on Same to March 1-1877

" the value of improvements See Statement 3

Amt payments, improvements &amp; Ints to March 1/77. . . \$1210 85

By rent of land from Feb 12/74 to Feb 12 1875 65 00

" Interest on Same two years 7 80

By rent of land from Feb 12/75 to Feb 12 1876 65 00

" Interest on Same one year 3 90

By rent of land from Feb 12/76 to Feb 12 1877. 65 00

Interest on Same 17 days 19

By rent of land 17 days from Feb 12/77 to March 1/77. 2 71 209 60

Balance due Gullenwaters March 1/77. . . 1001 25

Said Livesays to said Gullenwaters

To aggregate amt of payments without Int 895 00

" " value of improvements 162 50

By rents and Profits without interest 197 71 1057 50

Bal due Gullenwaters March 1/77. . . \$859 59



James Gillenwaters  
vs. { 5. Stalwarts.  
Livesey & Livesey

(A6)



144 753

Eighteen months after date with interest  
 from date ~~of~~ kind myself shure to  
 pay C. T. Duncan ~~for~~ commission in  
 the Chancery cause of James Gillen-  
 water vs. Let Lacey & Co. One hun-  
 dred & ~~forty~~ four \$100 dollars. Value  
 of said land And as to this debt we waive  
 the benefit of our homestead exemption  
 Witness our hands and seals This 1st  
 day of September 1879.

Witness:

James Gillenwater. *Seal*  
 F. A. Stickley John <sup>his</sup> Roberts *Seal*  
 mak



Twelve months after date with interest from date  
We bind ourselves heirs & jointly and severally  
to pay C.T. Duncan Commissioner in the  
Chancery Cause of James Gillenwaters  
vs. ~~St~~ Linsay et al. One hundred & forty  
four dollars. ~~Plus~~ Seventy five  $\frac{1}{3}$  Cents value  
received in land and as to this debt we waive  
the benefit of our homestead exemption Witness  
our hands and seals This 1st day of Sept 1879.

Witness: James Gillenwaters (Seal)  
F. A. Shetley John <sup>his</sup> X Roberts (Seal)  
<sub>mark</sub>

Twelve months after date with interest from date  
We bind ourselves heirs & jointly and se-  
verally to pay C.T. Duncan Commis-  
sioner in the Chancery Cause of James Gillen-  
waters vs. ~~St~~ Linsay et al. One hundred  
and forty four dollars and seventy five  $\frac{1}{3}$  Cents  
value received in land and as to this debt  
we waive our homestead exemption Wit-  
ness our hands and seals This 1st day of  
September 1879.

Witness: James Gillenwaters (Seal)  
F. A. Shetley John <sup>his</sup> X Roberts (Seal)  
<sub>mark</sub>



Know all persons by these presents that I.  
S. H. Livsey am held and firmly bound unto  
Jas. Gillenwater in the penal sum of Four thousand  
dollars lawful money of the United States for  
the true performance Whereof he binds himself his  
heirs Executors and Administrators jointly & severally  
sealed with his seal and dated this 26<sup>th</sup> November  
1873

The Condition of the above  
Obligation is such that Whereas the said S. H.  
Livsey has this day sold unto James Gillenwaters  
a certain tract or parcel of lands lying and  
being in the County of Lee and State of Virginia  
Containing Two Hundred and Fifty Acres be the  
same more or less being the lands whereon

W. W. Livsey now Occupys & Resides at Includes  
the buildings house and improvements whereon  
the said W. W. Livsey lives and adjoining the lands  
of Patrick Livsey Tho<sup>s</sup> Anderson Daniel Roberts  
an Solomon Owens Hugh Hollister and Allen  
Chandler and now. When the said James Gillen-  
waters shall well and truly pay the said S. H. Livsey  
the sum of Two thousand Dollars per money the S.  
S. H. Livsey shall make or cause to be made a good  
and sufficient Warranted title to the above described  
tract of lands to the Sd Jas. Gillenwaters his heirs and  
assigns then the above to be null and void otherwise to  
Remain in full force and Virtue Given under my hands  
and seal this day and year first above written  
Attest  
John A. Moore Sanders, H. Livsey







Part of Papers  
in  
Gillenwater vs. Levacy

Residue in Hands  
of the Court  
Mar. 31<sup>st</sup> 84

Reserved for Vacation  
J. A. K.



(1)

Met according to subpoena, on the 14<sup>th</sup> day of  
March 1876, at John H. More, School house, in the county  
of Lee and State of Virginia given under my hand this  
the 14<sup>th</sup> day of March 1876. Thomas, McPherson, D. P.

John Osburn, a witness of lawfull age being  
duely sworn deposeth and saith,

Questions by plaintiff Gillenwaters,

was you present when I and S. H. Geisay and  
Wm. W. Geisay, exchanged bonds.

Ans. By witness. I was.

Question by same,

did or not the said Geisays claim on that  
day that the right to said land was good.

Ans by witness,

My best recollection is that Wm. W. Geisay  
claimed that the right was good, on that  
and further this deponent saith not.

John Osburn

John H. More, another witness of lawfull age being  
duely sworn deposeth and saith,

Questions by same,

was you present, when I purchased the land now  
in controversy, from S. H. Geisay.

Ans by witness. I was present, when S. H. Geisay executed  
his bond to said Gillenwaters for right to said land.



(2)

Question by same,

did or not. S. H. Levisay and Wm. W. Levisay claim at that time that the title to said land was good.

Ans by witness. I do not recollect, whether or not they was any thing said on that day about the wright but I have heard Wm. W. Levisay say often that the title was good. Since said Gillenwaters purchsed said land from said Levisays,

Question by same,

was you present, when me and S. H. & Wm. W. Levisay exchanged hands.

Ans by witness. I was.

Question by same,

do you or not recollect, whether they <sup>or not</sup> was some talk, between, said Gillenwaters in reference, to changing hands with said Levisays, and if so, pleas. state what that conversation was.

Ans by witness. I do not recollect any conversation.

between said parties but said Gillenwaters did refuse to change hands, ~~but after some~~ ~~at a late hour~~ from the fact that he was afraid of the title to said land. but after the persuasion of his friends he did change hands.

1 over,

(3)

Question by same,

did you and Wm. W. Levisay come down to my house about the first of June 1845. Ans by witness yes sir I came to your house about that time, with Wm. W. Levisay

Question by same,

for what purpose did you & Wm. W. Levisay come for.

Ans by witness.

my understanding was for to get the matter between them settled so Wm. W. Levisay could get his money, and Mr Gillenwaters refused to pay him any more money from the fact that he was afraid of the wright to said land, and Mr Gillenwaters told Wm. W. Levisay that if he would pay him his money back, he would give up the land, and Mr Levisay said that he could not do it from the fact that he had disposed of his money so he was not able then to do it and also Wm. W. Levisay claimed on that day that the wright was good.

Cross examination

Question by defendant Levisay

do you or not recollect after that time you speak of in the above answer, at A. B. Anderson's store, that I offered to take the land back and pay him \$300 in the fall and the balance the next fall



(4)

Ans by witness

yes sir I recollect it and Mr Gillenwater  
said he could not do with that amount  
of money ~~at~~ the first payment,  
and further the deponent, said not.

John A. Moore

James W. Wrenn

James W. Wrenn

James W. Wrenn

James W. Wrenn

James W. Wrenn

James W. Wrenn

Virginia, Lee County, to wit:

I James W. Wrenn of the County Court, in and for the  
County and State aforesaid, do certify that the foregoing  
depositions of John A. Moore and John A. Moore were taken  
subscribed & sworn to before me at the time and place  
and for the purposes in the caption mentioned.

Witness my hand, this 17th day of March 1876.

John A. Wrenn, C. J.



J H Leaver W W Leaver Andrew  
Testament Bohm Roberts Wallen  
Roberts Gentlemen Take Notice That  
I will on the 12 day of March 1876  
at the dwelling house of H J  
Gillenwater in the County of Scott  
and State of Virginia proceed to take  
the depositions of H J Gillenwater and  
others to be Read as evidence in my  
behalf in a certain Suit in chancery  
pending in the Circuit Court of the  
County of Virginia Whereas as I am  
Complainant and J H Leaver and  
others are defendants and if from any  
Cause the taking should not be begun  
or being begun should not be completed I  
will adjourn from time to time and  
from place to place until the same  
is completed

Respectfully  
Jamus Gillenwater



James Gillinwater  
vs Notice  
S. H. Lewis, et als

---

Virginia Gee County to wit.

John, Osborn,

personally appeared before me and  
made oath that he on the 26<sup>th</sup> <sup>or 28<sup>th</sup></sup>  
& 29<sup>th</sup> of February & 1<sup>st</sup> of March 1876  
he delivered a true copy of the within  
to S. H. Lewis and others given  
under my hand this the 10<sup>th</sup> of March  
1876  
J. H. McPherson J. S.



I hereby release all claims to the payment  
at low revenue against me for \$500.00 on  
the 4<sup>th</sup> day of September 1875 - by Sanders  
& Leary for the benefit of Andrew Leary  
Mort. Sept 23<sup>rd</sup> 1875 -

James Williamson



James Gillewater  
vs - J. Release of Bonds  
B. Leroy et al



Know all men by these presents, that we James Gillinwaters  
& John B Pennington are held and firmly  
bound unto Andrew Testament in the just and full  
sum of One thousand dollars, for the payment thereof well and  
truly to be made to the said Testament - we bind ourselves  
our heirs, executors and administrators jointly and severally  
firmly by these presents, And we hereby waive the benefit of  
our Homestead exemption as to this bond. Witness our hands  
and seals, This the 28th day of September 1870.

The condition of the above obligation is such that whereas the  
above named James Gillinwaters hath obtained from the Judge  
of the Circuit Court of Lee County, Virginia, an injunction, to stay  
until the further order of said Court all further proceedings on a  
Writ of said Court awarded against him by Doctors  
H. Leroy for the benefit of said Andrew Testament, on the 4th day  
of September 1870, for \$500.00 with legal interest thereon from  
the 1st day of October 1874, till paid, and costs, Now if said  
James Gillinwaters shall well and truly satisfy and pay said  
judgment and all damages said costs awarded against him  
provided said injunction shall be dissolved, then this obliga-  
tion to be void, otherwise to remain in full force and virtue.

James Gillinwaters Seal  
John B Pennington Seal



pt. 1000. William Waters & al  
Liz. Conjunction Bond  
St. Andrew Testament  
Filed Sept 29th 1876.  
James W. Orr, clk.



I, John Roberts, have this bargained and sold and do  
hereby transfer and convey unto William W. Livesay, and  
his heirs forever for the consideration of the sum of four  
hundred dollars in hand a tract or parcel of land in  
the State of Virginia, and County of Lee, District No. 4,  
Containing by estimation one hundred and fifty acres,  
being the same more or less, and bounded as follows,  
Beginning on a Mulberry on top of a spur running down  
into a Hollow, and with the branch running southerly  
to the wagon road to a poplar, thence southerly cross-  
ing the wagon road running to the state line to three  
trees, two hickories and a poplar, thence with the state  
line West to P. H. Linsays and W. W. Livesay's line, thence  
Northerly with said line, crossing the Valley Turnpike,  
near the wagon road, thence westwardly to a hickory  
in a Deer lick, thence Northerly with the branch to  
thence southerly to the beginning including to have  
and to hold the same to the said William Livesay his heirs  
and assigns forever, I do covenant with said Livesay that  
it is lawfully seized of said land, have a good right  
to convey it, and that the same is unencumbered, I do  
further covenants and binds myself, my heirs and  
representatives, to warrant & forever defend the title to the  
said land, and every part thereof, to the said William W.  
Livesay, his heirs and assigns against the lawful cla-  
ims of all persons whatever this, the 20<sup>th</sup> day of December

1868, Witness my hand

W. W. Livesay.  
Stephen S. Surgeon

John <sup>his</sup> Roberts seal  
Attest my hand  
John Roberts Seal



Lee County Court Clerk's Office, the 17th day of July 1869.

The foregoing Indenture of bargain and sale for land between John Roberts, of the one part, and William M. Linacy of the other part, being duly stamped, is admitted to record the same having this day been acknowledged before me by the said Roberts to be his act and deed for the purposes therein mentioned.

Wm S. Thompson Clerk

Attest

Wm John R. Sitwell

William M. Linacy  
County Clerk of Deed  
of Lee Roberts & wife.

(6)

See for this 25.00



Mr. James. Gilemwater

Take notice that on the  
6<sup>th</sup> day of March 1876, at the dwelling house  
of Thomas McPherson in the county of Lee and  
State of Virginia I shall proceed to take the  
depositions of Stokely Lawson and others, which  
when taken are intended to be read as evidence  
on my behalf, in a certain suit in chancery  
now pending in the circuit court of Lee County  
in which ~~I am~~ you are plaintiff and I am  
defendant; and if the said depositions be  
not commenced on that day or if com-  
menced be not concluded the same will  
be adjourned & continued from time to  
time & from place to place until the same  
be completed. Yours truly

William W. Lawson.

Feb. 26<sup>th</sup> 1876.



Virginia Lee County to wit  
 Hiram H. Geisinger, this day

personally appeared before me and made  
 oath that he on the 26. day of February, 1876  
 he received a true copy of the within to James Hillman  
 given under my hand this 26 day of Feb. 1876

Jos. McPherson. J. P.

500.  
 6574 / 577  
 8143 426. / 400  
 149.757 / 900  
 48426 / 34674  
 6574  
 16.24  
 49.70



The deposition of Herald & Gillenwater  
and others taken before me Henry S  
Carter a Justice of the peace for the  
County of Scott pursuant to notice  
hereto annexed at Herald & Gillenwater  
in said County on the 13 day of March  
1876 to be read as evidence on behalf  
of James Gillenwater in a certain matter  
now depending in the Circuit of  
Lee County where in the said Gillen  
water is plaintiff and S M Levacy and  
others are defendants

S Herald & Gillenwater as witnesses  
of lawful age after being duly  
Sworn de poseth and saith

Question by plaintiff  
was you present when I bought  
the land in controversy of Sanders  
M Levacy

answer

I was

Question by same

I ask Sanders M Levacy <sup>and</sup> S M Levacy  
If the title of the land was good and  
they both answered that it was good  
that they would make a clear  
title

Question by same

I ask them If there was any claims  
or liens on the land any way, and  
they said there was not



and further this deponent sayeth not

Herald S. Gillenwater

Solomon Owens a witness of law full  
age after being duly sworn deposes  
and sayeth

Question by plaintiff  
did you by some ~~of~~ <sup>of</sup> land ~~of~~ <sup>of</sup> ~~the~~ <sup>the</sup> ~~Levacy~~ <sup>Levacy</sup> before  
Gillenwater bought

answer

I did

Question by same  
is the land you bought of ~~of~~ <sup>of</sup> ~~the~~ <sup>the</sup> ~~Levacy~~ <sup>Levacy</sup>,  
a part of the same tract that Gillenwater  
bought of ~~of~~ <sup>of</sup> ~~the~~ <sup>the</sup> ~~Levacy~~ <sup>Levacy</sup>

Answer

it was a part of the John Roberts tract  
of land that Gillenwater bought a part  
of

Question by same

I ask him if the title of the land was  
good and ~~he~~ <sup>he</sup> said it was

Question by same

some time about the first days of Oct 1875



Wm Leacy was at my house and at that  
time he told me that the title of the land  
that I had bought of him was good  
and Wm Leacy told me in every conver-  
sation me and him had up to that time  
<sup>he said</sup> that the title of the Gillanwaters land  
was good  
and further this deponent sayeth not

Salomon Bunn

The further taking of these depositions is  
continued till the 17 day of March 1876  
at John Mores School house in Lee County  
Va

Given under my hand this 13 day of March 1876  
Virginia - Scott County Henry Barta J  
J Henry Barta a Justice of the peace for the county  
aforesaid in said State do hereby certify that the  
foregoing deposition were duly taken sworn  
to and subscribed before me at the times and  
place mentioned therein  
Given under my hand this 13 day of March 1876  
H Barta J







W. M. Starter the Justice that take the  
following deposition do certify that the  
following is the bill of cost incurred  
in taking the same for the Justice of  
the peace

Justice be  
two witnesses fifty cents each

\$1.50  
1.00  
2.50



This Indenture made this the 24<sup>th</sup> day of may  
Eighteen<sup>and</sup> ~~Eighty~~ <sup>and</sup> Seventy Three Between William W. Livsey  
& Jane his wife of the County of Lee & State  
of Virginia of the first part and Sanders H  
Livsey of the County and State aforesaid of the  
second part Witnesseth that in consideration of  
the sum of One Thousand<sup>Five Hundred</sup> Dollars in hands paid  
the said William W. Livsey and Jane his wife do  
grant unto the said Sanders H. Livsey a certain  
Tract or parcel of Lands lying and being in the County  
of Lee & State aforesaid on the waters of Blackwaters and  
part of the Home Tract of Lands of Jesse Roberts Decea-  
sed and bounded as follows to wit

Beginning on a Hickory and Mulberry. West to  
a Beech thence south to a buckeye in a deer lick  
thence East to a white oak and Beech thence south  
to the State line to a stake thence North with  
Noah Andersons line to two white oaks on Hoards  
line thence East with Hoards line to a white oak  
thence North East to Jesse Roberts Jr. line thence  
with said Roberts line to the beginning another  
portion. Beginning on a beech thence West to  
a white Oak Beech and sugar tree on a steep  
bank of a Branch thence South down the  
Branch near the Waggow Road thence Crossing  
the road South a strait line to a poplar and  
two Hickories on the State line thence East with  
the State line to Waller Roberts line thence with



with said Roberts line to the beginning another  
portion Beginning on a white Oak Beech and sugar tree  
thence West with Daniel Roberts line to the State  
line thence East with the State line to a poplar  
and two Hickories thence North to the beginning  
and the said William W. Livesay and Jane his wife  
agrees for themselves and heirs together with all and  
singular the appurtenances thereto belonging to  
the said Sanders H. Livesay and his heirs & assigns  
free from the claims of them the said William  
W. Livesay and his wife or their heirs and of  
all and every person whatever do warrant and  
defend forever By these presents in witness  
whereof the said William W. Livesay and Jane  
his wife have hereunto set their hands and  
fixed their seals the Day & year first  
above written

Test

W. W. Livesay

Test Greenville Livesay

William W. Livesay

Jane W. Livesay

Pa Lee County to wit

I Thomas McPherson  
a justice of the peace in the County aforesaid  
do certify that Wm W. Livesay a party to a certain  
deed bearing date on the 24 day of May 1876  
and herewith annexed, personally appeared before  
me in my County aforesaid and acknowledged  
the same to be his act and deed, and does not  
wish to retract the same. Given under my hand  
this 24<sup>th</sup> day of May 1876

Thomas McPherson J.P.

See Grant and Clerk's office May 26th 1876.

The foregoing deed from William W. Livesay and Jane his wife of  
the one part, to Sanders H. Livesay of the other part, out of the County  
Virginia, came this day acknowledged to me by the said  
Jane Livesay to be her act and deed for the purposes therein  
mentioned, and the said Jane Livesay being examined by me  
privately and separately and apart from her said Husband and  
showing the deed was fully explained to her acknowledged  
that she had willingly signed and executed the same and  
wished not to retract it, and said deed is admitted to record.

Test James W. Corbett



Sanders H Lemaay

Trout Seed

Mrs H Lemaay's wife

---

Recorded in Seed Book

No. 14 Page 654

Mrs. J. C. L.

1878  
1879  
1880

Recd. from  
20. 117.



Levacy

Gilliwaters

Original Bill. <sup>on 23<sup>rd</sup> Nov/873</sup> Alleges trade for land to have been made with S. H. Levacy, for the sum of \$2000. so And that S. H. & understood and bound himself to convey, - that \$2000. was paid in hand. And that the bond falling due April 1<sup>st</sup> 1874 he paid \$895 = \$895- in all - And that on the 8<sup>th</sup> day of Jan 1875- S. H. Levacy came to the plff & represented that he had that day re-conveyed said land to W. W. Levacy - from whom (W. W. L.) the S. H. & had purchased said land. And plff confiding in " " agreed to it, gave up the bond and took W. W. Levacy. - And further on alleges that S. H. sold to plff & bound himself to convey, & afterwards reconveyed Bill filed Aug. 1875-

---

S. H. Levacy Answer Dec. 1875- Denys the trade was made with him - or that he was responsible for the title having lifted his bond - and adopts W. W. Levacy answer.

---

W. W. Levacy files his answer at the same time and alleges that the trade was made with - S. H. L. - But with respect - and details the transaction

---

Depositions are taken S. H. L. and atty & Gilliwaters cross examine and the answers to him on the trade as set out in the answer are fully sustained.



Levacy

achy - Memo

Gillincwater

Duncan,

States the purchase was  
made from H. H. Co.

Received \$778 - various  
paid to W. W. Levacy  
No such statement  
Answer



James Gillenwaters against S. H. & W. W. Levesey

In this case I am of opinion that the parties, by the substitution of the title bond of W. W. Levesey for that of S. H. Levesey intended it to operate as a discharge of S. H. Levesey from his obligation to make good the title. This is manifested by the surrender of S. H. Levesey's bond. S. H. Levesey's liability, therefore to Gillenwaters, on the contract, when the sale was annulled and set aside, ought not to extend further than to the amount received by him from Gillenwaters, and not refunded or paid over to W. W. Levesey before this suit was brought, and service of the subpoena on S. H. Levesey, to wit, on the day of 1875; or until S. H. Levesey had notice of the filing of the bill.

A payment made to W. W. Levesey after this date, I think ought not to discharge him. In determining whether I should reverse any of the decrees in this cause as to S. H. Levesey, it will be necessary to ascertain whether they are based on this principle. The decree of Dec. 8<sup>th</sup>, 1876, does not settle this question, in directing the account. It directs Judge Morgan to ascertain the sum paid the defendants. By Judge Morgan's report the sum reported paid is not discriminated, but it is stated as the amount paid to defendants. If Mr. Gillenwaters' deposition could be read against S. H. Levesey, it fixes distinctly the amount paid to S. H. Levesey at \$500.<sup>00</sup> \$270 + \$100 to S. H. Levesey's assignee, making \$870. It shows \$20. & \$5. p. t. to W. W. Levesey. But the excess of rents over improvements is equal to this \$25.<sup>00</sup> and on Mr. Gillenwaters' deposition the decree charging both S. H. Levesey & W. W. Levesey with the balance would be correct. S. H. Levesey having rec'd. the money was, in equity bound to refund it to Mr. Gillenwaters & W. W. Levesey, having by his bond undertaken for the sufficiency of title, was likewise bound. But the report of Judge H. J. Morgan shows distinctly on its face that this deposition was taken without notice to S. H. Levesey, either that the account would then be taken, or that any depositions would be taken, and that it was taken in his absence. Subsequently, on notice to depts. the report states, that an account would be taken, and that W. W. Levesey & p. t. appeared before him, and entered into a bond to abide the award of arbitrators as to the rents & improvements. No account was taken; the arbitrators are said to have made their award, & their finding is reported as the basis of Commissioner Morgan's report. To this report there are no exceptions.



If the report was regular and upon its face, properly charged S. H. Devesy, he could not complain of the decree of the Court based on it: but I believe the rule is well settled that any matter appearing plainly on the face of the report may be relied on even in an Appellate Court.

Now here it distinctly appears that no notice of the taking of Kellenwater's deposition was given S. H. Devesy, and it is the only paper accompanying the Commissioner's report that shows S. H. Devesy's liability for money received by him. It further distinctly appears that the accounts of rents and profits & improvements was based upon an award to which S. H. Devesy was no party, nor does it even appear when the award was made or that S. H. Devesy had notice of such an award.

He is certainly not bound by it. It seems therefore, that the decree of December 8<sup>th</sup> 1876, ought to be so far modified, as to S. H. Devesy, as to require the Commissioner to ascertain what amount or amounts were paid by plaintiff to S. H. Devesy, or to his assignee or assignees on the purchase made by plaintiff, of the land in controversy, with liberty to S. H. Devesy, if he can to show that this sum, <sup>or any part of it</sup> was repaid to W. H. Devesy before he had notice of the filing of the bill in this case, or the service of the subpoena on him. And that the decree of 5<sup>th</sup> of April 1877, confirming said report as to S. H. Devesy and decreeing against him jointly with W. H. Devesy for \$1001. <sup>25</sup> with interest, &c. should be set aside



and the subsequent decrees against S. H. Leveay, based on this decree should be set aside. But all the decrees as to W. W. Leveay should stand and be obligatory on him as there is no error against him, in any respect, except that interest is given against him on a balance of \$1001.<sup>25</sup> when interest should only have been given against him ~~for~~<sup>on</sup> the principal sum, to wit \$859.<sup>59</sup>, thus avoiding compound interest.

In accordance with these views a decree will be entered, modifying the decree against W. W. Leveay as to the interest, but in all other respects affirming the decrees as to him; but modifying the decree of 8<sup>th</sup> Decr. 1876, as to S. H. Leveay so as to refer the question of his receipts of purchase <sup>money</sup> individually, the amount for which he is responsible to the Commission as well as the question of rent, improvements, and annulling as to S. H. Leveay, all the decrees, subsequent to 8<sup>th</sup> Decr. 1876.

James Gillenwaters Complainant  
vs  
S. H. Leveay et al      Defs:      S. In Chancery

This cause came on this day ~~again~~ <sup>to be heard</sup> and be reheard ~~as to~~ the defendant, S. H. Leveay, on the papers heretofore read and the answer of Complainant to the petition for a rehearing with replication thereto, and was argued by counsel. On consideration whereof, and pursuant to a written opinion filed in the cause, it is adjudged, ordered and decreed that ~~the~~ <sup>be so</sup> ~~the~~ decree of Decr. 8<sup>th</sup> 1876, ~~be so~~ <sup>be so</sup> modified.



as to require Commissioner, H. J. Morgan to ascertain what sum of the purchase money for the lands in controversy came to the hands of deft. S. H. Levey, either by payments to him, or by his receipts upon assignment, or transfers of the purchase money notes; and that he also hear proof of any payment, or payment thereof, made by said S. H. Levey to W. W. Levey before service of the subpoena in this cause on him, or his notice of the filing of this bill ~~showing the amount~~ and the Commissioner will show the amount in the hands of said S. H. Levey, if any, at the date of said service or notice. He will further ~~show to said~~ <sup>as to said</sup> S. H. Levey open the account of rents & improvements, and restate the same, upon such evidence as either said Gellinwater or said S. H. Levey may offer. And on the principles of this decree & the aforesaid opinion filed in the cause the Commissioner will <sup>show</sup> the balance of purchase money received by said S. H. Levey for which he should be held to account to plaintiff. And as to all the said S. H. Levey, all the decrees subsequent to the decree of Decr. 1876, are set aside: and as to the said W. W. Levey they are all held valid. But the decrees allowing interest on \$1000.<sup>25</sup> from 1<sup>st</sup> March 1877 till paid, are amended so as to allow interest only on \$859.<sup>59</sup> from 1<sup>st</sup> March 1877 till paid. And report of Commissioner Morgan is re-committed to him for the purpose of this decree. He will report his action hereon to Court and the cause is continued.

Gellinwater  
Opinion of  
Levey  
Decree

W. W. Levey  
H. J. Morgan

W. W. Levey  
H. J. Morgan



The Commonwealth of Virginia:

To The Sheriff of Lee County:—Greeting.

WE COMMAND YOU TO SUMMON

*Sanders & Leacy, W. W. Leacy  
Andrew Testament, John Roberts and Walter Roberts*

to appear before the Judge of the *Circuit* Court of Lee County, at the Court-house, in the  
Clerk's Office, *at October* Rules next, to answer a bill in chancery, ex-  
hibited in our said Court against *them by James Williamson*

And have then there this writ. Witness, JAMES W. ORR, Clerk of our said Court, at the  
Court-house, this *29th* day *September*, 1875, in the *100th* year of the Commonwealth,

*James W. Orr, Clerk.*



To suspend and inhibit the collection of the several debts  
in the plaintiffs bill mentioned until the future order  
of the Court, bond with security having been given by  
the plaintiff, as required by the order granting the  
injunction.

Attest James W Orr. Clerk

1300

James Gillman et al

vs J. Spa in Phy.

vs Sanders & Lowrey et al

Chas. B. Coles 1875.

recd.

Wm. J. Taylor, Esq.  
for J. Spa in Phy. S. L. Co.



Lee County, To wit

Francis Miles const of said county,

I command you in the name of the Commonwealth of Va.,  
to summon John. Osbourne & John. H. More to appear on the  
17<sup>th</sup> day of March, 1876 at John. H. More school, house in the  
said county, before me a Justice of the said county, as may then  
be there to give evidence in behalf of James. Gillenwaters,  
in a certain suit in the circuit court of the county of Lee and  
State of Virginia wherein the said Gillenwaters is plaintiff  
and Wm. W. Levisay and others are defendants given under  
my hand this the 17<sup>th</sup> day of March 1876.

Thos. McPherson, J. P.



Suspension for

John A. Moore &  
John Ashburn.

we except the legal  
seems of the within  
suspension this the  
17<sup>th</sup> day of March 1870

J. A. Moore  
John Ashburn



Mr. Sanders & Leray W. H. Leray, Andrew Lister-  
ment Waller Roberts and John Roberts.

Take notice that on Friday the 11<sup>th</sup> day of August  
1876, at the ~~dwelling~~ house of John A Moore in  
Lee County Virginia I will proceed to take the dep-  
osition of John A Moore and others which  
depositions are intended to be read as evidence  
in my behalf in <sup>a suit in</sup> ~~a~~ chancery ~~cause~~ now pending  
in the Circuit Court of Lee County Virginia in  
which I am Plaintiff and you are defendants  
and if from any cause the taking of said dep-  
ositions should not be completed on that  
day the taking thereof will be continued from  
day to day and from time to time and from  
place to place until they are finished  
Given under my hand this 25<sup>th</sup> day of July 1876.

James Gillenwaters.



Virginia Lee County To wit

This day George Osborne personally appeared  
before me Thos M. Pherson a Justice of said County and  
made oath that he delivered a true copy of the within notice  
to W. W. Lumsy ~~and~~ <sup>Walter</sup> Roberts on the 31<sup>st</sup> day  
of July 1876. Given under my hand this 11<sup>th</sup> day  
of August 1876. — Thos. McPherson J.P.

James Gillenwaters  
1877 } Notice to take Dep.  
James W. Lumsy it also



Virginia Lee County Court

To the Sheriff of Lee County Greeting

For and Summons Fielding Testament John T. Sway  
Stokely Swanson & Thomas Mow <sup>John M. Tate</sup> to appear before me at  
my office in Jonesville on the 5<sup>th</sup> day of Nov. 1884  
to give evidence on the part of S. T. Sway against  
James Gillenwaters Given under my hand this  
~~5<sup>th</sup>~~ day of Nov. 1884.

Henry J. Morgan Court.



S. H. Lively

27 } Jan

Feb. Githenwaters

Executed on all  
the parties but  
Thomas More  
Nov 5<sup>th</sup> 1884

Stately Lawson  
D. S. L.